

ATTACHMENTS # 15

- 1. Copies of correspondence from and to the Clarksburg
Town Center Advisory Committee from August 16, 2004
through August 10, 2005**

August 16, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Attachment 1
RECEIVED
1288
AUG 19 2004

Re: Proposed Changes to Project Plan for Clarksburg Town Center

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PLANNING AND PLANNING COMMISSION

Dear Mr. Berlage:

As Co-Chairs of the Clarksburg Town Center (CTC) Advisory Committee, we are writing as the collective voice of the community to express our strong opposition to the deviations (as contained within the Site Plan proposed by the developer, Newland Communities) from the approved Project Plan #9-94004. These deviations concern the commercial and other sections of the development as reflected in the Site Plan presented by Newland Communities during the July 27, 2004 meeting with CTC residents.

As proposed by the original applicants and developer, Clarksburg Town Center Venture and Terrabrook, and approved by the Planning Board, Clarksburg Town Center is a neo-traditional community reflecting the "New Urbanism" school of community planning and design. Accordingly, it is designed and intended to provide a unique pedestrian-oriented neighborhood that allows residents to walk to the recreational, retail, civic and other facilities dictated in the Master and Project Plans previously approved by the Board. Specifically, the Town Square was designed and intended to serve as the focus of public life, with retail and commercial establishments located on the East side of the development's Main Street and Town Square. The Master Plan also gave careful consideration to protecting the character of Clarksburg's Historical District, the Gateway to the Town Square.

Clarksburg Town Center is in the RMX-2 Zone, which allows for both "standard" and "optional" methods of development. Under the "standard" method, office and retail uses are not allowed at all. Accordingly, the developer submitted and the Board approved an "optional" method of development that allowed for high-density residential units mixed with commercial uses if in accordance with the guidelines of the Master Plan, and that explicitly required certain public amenities and facilities. It appears that the developer thus could not have gotten approval for this high-density residential project without including in its application the community-oriented and pedestrian-friendly plans for the Town Center's retail and commercial development that the Commission ultimately approved.

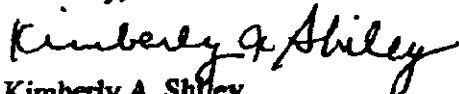
Newland Communities (who purchased the development from Terrabrook late last year) is now proposing a radical change to the retail and commercial areas of the Town Center. Under this proposal, the retail and commercial establishments to be located along Main Street and the Town Square will be replaced with four-story condominium buildings and other multi-family residential units, thus increasing the residential density of what is already a high-density development. The retail and office square footage has been reduced by 53.2% of the approved square footage and the proposed plan consists of a huge square parking lot bordered by a 58,800-square foot grocery superstore (reportedly Giant) with retail establishments adjoining on each side, a proposed drive-thru bank, one freestanding restaurant and a combination office/retail building located along the south side of the parking lot.

Although its configuration is in the shape of a square, Newland Communities' proposed change is the very antithesis of the "Town Square" concept that is a defining characteristic of neo-traditional communities, and that was at the heart of the Clarksburg Town Center plan that the Board approved. It simply replaces the pedestrian-friendly, community-oriented Town Center concept with a regional strip mall, but with one important difference—Newland Communities' proposed regional strip mall will be located in the heart of a high-density residential community. Indeed, one of the two principal thoroughfares for automobile ingress to and egress from the shopping center will be through and/or adjacent to the Town Square, departing even further from the pedestrian-friendly approach that both the Master and Project Plans define as the main characteristic of Clarksburg Town Center.

As you can well imagine, Newland Communities' proposal is inconsistent with the Planning Board's Master Plan and subsequent Project Plan and is not reflective of the community marketed by the builders of CTC nor is it in keeping with the concept that was solicited at the Visitor's Center when my neighbors and I were making our decisions to purchase homes in Clarksburg Town Center. Many others in the vicinity of CTC are opposed to Newland Communities' proposed changes as well. At the July 27, 2004 meeting with Newland Communities to discuss their proposal, the room was filled to capacity with concerned Clarksburg residents from the Town Center and from the general community, while additional concerned residents stood in the hall. The following week, a meeting held by residents of CTC regarding the same issue attracted over 100 residents and the CTC Advisory Committee was established to address these issues. The Clarksburg Civic Association, which has been instrumental in the planning and implementation process for Clarksburg Town Center for over a decade is also opposed to Newland Communities' deviation from the Project and Master Plans.

Based on these issues, we respectfully request that the Board not approve Newland Communities' proposed site plan, and require Newland Communities to abide by the original terms of the Project Plan. We would ask that the Board not take any action on the proposed site plan, requests for amendments, or requests for zoning variances pertaining to a reduction in the RDT Zones until it has studied the proposal thoroughly and received the input of the residents of the Clarksburg Town Center, the Clarksburg Civic Association and all other interested parties. Thank you for your consideration.

Sincerely,



Kimberly A. Shiley
Co-chair, CTC Advisory Committee



Carol L. Smith
Co-chair, CTC Advisory Committee

cc: Sue Edwards, Team Leader I270 Corridor Area, M-NCPPC
John Carter, Chief, Community Based Planning Division, M-NCPPC
Wynn Witthans, Development Review, Planning Department, M-NCPPC
Clarksburg Civic Association
Clarksburg Historical Society
Montgomery County Historical Society
Doug Duncan, County Executive, Montgomery County
Kathy Matthews, Director of Upcounty Regional Services
Nancy Hislop, Assistant Director of Upcounty Regional Services
Mike Knapp, County Council, Montgomery County
Brian Long, Aide to Council Member Mike Knapp
Kimberly Ambrose, Vice President of Operations, Newland Communities
Taylor Chess, Vice President Investments, Regency Centers
Susan Singer-Bart, The Gazette

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

December 8, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

VIA: Joyce Coleman, Special Assistant

Dear Mr. Berlage:

It is with great interest in upholding the vision and intent of the Clarksburg Town Center Master Plan that we are writing to you. As you may recall, per the letter you received from our group in August, 2004, the CTCAC (Clarksburg Town Center Advisory Committee) was formed in response to the Town Center residents' discovery of deviations by the developer (Newland Communities) to the Master Plan concept and Project Plan Guidelines. The residents elected the CTCAC to represent them in taking action with MNCPPC and the developer to ensure adherence to the vision and intent of the Master Plan.

Since the CTCAC was elected in July, 2004, we have become very active in researching not only the intent of the Master Plan and approved Project Plan, but also the detailed parameters within the Conditions and Findings, as well as the processes within MNCPPC for site plan submission and approval. As part of our process, we have researched and read every document available on file with MNCPPC relative to Clarksburg Town Center. In doing so, we have made ourselves aware of all requirements under the "Optional Method of Development" for the RMX2 zoning and the related requirements for complete compliance with the Conditions and Findings of the approved Project Plan #9-94004 and Preliminary Plan #1-95042.

The CTCAC and residents are in full agreement with the Land Use Objectives of the Clarksburg Master Plan, especially with regard to creating a pedestrian-friendly town center that will serve as the central focus for the entire study area. The CTCAC finds that in order to uphold these objectives, it is imperative for the developer to adhere completely to the Project Plan Guidelines/Conditions and Findings.

We have determined multiple areas in which Newland has departed from the intent and vision of the Master Plan and, more seriously, violated the Project Plan Conditions and Findings. The most pressing issue is Newland's violation of the height restrictions. The approved Project Plan restricts building heights to 4 stories/45' for residential and 4 stories/50' for commercial. The Master Plan and Project Plan clearly state the necessity for ensuring compatibility of scale with the historic district. As confirmed to us by John Carter and Nellie Maskal of Community Based

Planning, and Michael Ma of Development Review, this was a driver for the height limitation of 45' for residential structures.

CTC residents are gravely disturbed that buildings already constructed in Phase 1-B3 of the CTC development (Bozutto condominiums) measure 57', as recently confirmed to CTCAC by MNCPPC Development Review. Newland also confirmed a height in excess of 45', but stated that the building was 53'4". In either case, the structures are not compatible in scale with the historic district. This is a serious violation which requires immediate attention.

In addition to the buildings already constructed in Phase 1-B3, there are also buildings currently under construction within Phase 2B (Craftstar 2/2 Condominiums – Parcels B & N) which also violate the height restrictions, with planned heights of 51'7". Further, there are several other site plans previously approved for Phase 2C which include additional Craftstar 2/2 Condominiums and Bozutto Condominiums with planned heights exceeding the 45' maximum allowable according to the Project Plan Guidelines. Apparently, the site plans for these structures were erroneously approved, and/or the developer did not specify heights on the site plan (beyond "4 stories") and has violated the height restriction without MNCPPC's awareness. The CTC residents are seeking immediate action by MNCPPC to correct this situation before new buildings are constructed.

Ensuring compatibility with the historic nature of Clarksburg, especially in terms of scale as described with the Master and Project Plan, is essential to creating the type of community that was presented to the residents by the developer and builders when we purchased our properties in Clarksburg Town Center. We appreciate the assistance that we have received from MNCPPC to date in this regard. We have scheduled another meeting with Community Based Planning and Development Review for December 13th to discuss the specifics relative to the height violations described. However, the CTCAC respectfully requests a meeting with you to discuss our overall concerns.

We would appreciate it if a meeting could be scheduled with you prior to December 17th. We will contact Joyce Coleman to arrange the meeting at your convenience.

Sincerely,

Kim Shiley, Co-Chair, CTCAC
Amy Presley
Randy DeFrehn
Joel Richardson
Niren Nagda
Lynn Fantle

Carol E. Smith, Co-Chair, CTCAC
Tim DeArros
Mark Murphy
Jen Jackman
Tricia Larade
Jeff Lunenfeld

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Tuesday, December 14, 2004 11:11 AM
To: Carter, John
Cc: Ma, Michael; Witthans, Wynn; susan.edwards@mncppc-mc.org; Krasnow, Rose; councilmember.knapp@montgomerycountymd.gov; catherine.matthews@montgomerycountymd.gov; nancy.hislop@montgomerycountymd.gov; Berlage, Derick; Coleman, Joyce; nnagda@ENERGENconsulting.com; smithcar@mail.nih.gov; Shileykim@aol.com
Subject: Follow-up

Hello, John, Rose, Michale, Wynn, and Susan.

First, I want to thank you for meeting with us yesterday. Kim, Carol, Niren and I greatly appreciate your time and assistance in our attempts to ensure that Clarksburg Town Center is developed according to the vision and intent of the Master Plan, and in compliance with the Project Plan guidelines. On behalf of our entire CTCAC, we thank you for your efforts to date.

As we mentioned, we have the utmost respect for the work that was done by Community Based Planning, together with the Clarksburg Civic Association, the Historical Society, and all other contributors, to develop the Master Plan vision and the subsequent Project Plan guidelines to uphold that vision throughout the development process.

With regard to the height violation evident in the existing Bozutto condominium, and height violations of additional residences planned but not yet built, we are gravely concerned. As discussed yesterday, violations must be called out by MNCPPC as violations. Otherwise, the entire validity of the Project Plan process is nullified. It is not appropriate to enable developers to arbitrarily deviate from Project Plan conditions and findings...especially in an RMX2 project under "optional method of development" where such conditions and findings are "expressly tied to" and "not automatically severable" from the Project Plan, without remanding the entire Project Plan back to the Board for consideration. There is a proper process for the Board to review and address such developer desires in a hearing *prior* to the construction of structures which clearly violate terms and conditions of the Project Plan.

We do not believe that the height violation issue(s) can be properly addressed during the January hearing for supplemental amendments desired by the developer. As stated yesterday, we would expect MNCPPC to issue a violation to the developer and establish a Board hearing specifically on this issue.

As stated by Michael Ma, and confirmed by Wynn Witthans, the site plan(s) for the Bozutto condominiums as well as the 2/2's, did not contain specific height measurements - they merely stated "four stories." Therefore, we do not believe that MNCPPC is responsible for the violations. With a designation of "four stories" it would be expected that the site plan would be approved under the current Project Plan. The oneness is upon the developer to ensure that builders of those "four stories" comply with the heights specified in the Project Plan. The developer is clearly accountable and responsible for compliance with all conditions and findings of the Project Plan. It is evident that the developer was aware of the 45' height limitation for residential structures, and, under the "Site Plan Enforcement Agreement," takes full responsibility for development in accordance with that limitation.

We cannot sit idly by while developers change Project Plans at whim, according to market drivers. We appreciate your help in ensuring the sanctity of the Master Plan/Project Plan process.

We will await your response regarding issuance of a violation notice to the developer. Again, thank you for your time and assistance.

Sincerely,
 Amy Presley (on behalf of the CTCAC)

8/13/2005

301-916-7969 (office)
301-526-7435 (mobile)

8/13/2005

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Tuesday, December 21, 2004 11:18 AM
To: Krasnow, Rose
Cc: Carter, John; Ma, Michael; Witthans, Wynn; susan.edwards@mncppc-mc.org;
councilmember.knapp@montgomerycountymd.gov;
catherine.matthews@montgomerycountymd.gov; nancy.hislop@montgomerycountymd.gov;
Berlage, Derick; Coleman, Joyce; nnagda@ENERGENconsulting.com; smithcar@mail.nih.gov;
Shileykim@aol.com
Subject: Fwd: Follow-up

Hello Rose and all.

We have not yet heard back from you regarding the height violation issues and are wondering whether MNCPPC intends to issue a violation notice to Newland. The CTCAC would greatly appreciate a written response before the end of this week.

Thank you for your assistance in this matter.

Regards,
Amy Presley
on behalf of the CTCAC

8/13/2005

Krasnow, Rose

From: Witthans, Wynn
Sent: Monday, January 24, 2005 3:06 PM
To: 'Synergiesinc@aol.com'
Cc: Ma, Michael; Krasnow, Rose; Carter, John; Edwards, Sue; Maskal, Nellie
Subject: RE: December 8th Meeting - Follow-up

Hi Wynn - I just wanted to confirm the pending Planning Board hearing date of the CTC Phase I and II Site Plan Amendment for the Buzzuto/Leach Homes. It is proposed to be on February 10. This is an ideal time to consider your comments and coordinate the building height of the multi-family units (also built by Buzzuto) with the Planning Board. Please have any written correspondence to our office by February 1st.

The City is pending board action on staff meeting to hear from DRS regarding the SPA approvals for these units. We will be able to finalize the meeting date on Thursday the 27th and will notify you of the date date.

We will let you know if there are changes to your prepare your comments.

Wynn M. Krasnow
 Site Plan Coordinator
 410-330-1586

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]
Sent: Thursday, December 23, 2004 11:16 AM
To: kambrose@newlandcommunities.com
Cc: smithc@efdb.nci.nih.gov; davidkitchens@coopercarry.com; trodriguez@parkerrodriguez.com; rcroteau@newlandcommunities.com; shileyk@mail.nih.gov; nnagde@ENERGENconsulting.com; jersub13@yahoo.com; rdefrehn@nccmp.org; timdearros@comcast.net; Lfantle@aol.com; cariandjeff@comcast.net; murfs@comcast.net; JJackman@wtplaw.com; sendtriciamessages@msn.com; Carter, John; Maskal, Nellie; Ma, Michael; Witthans, Wynn; Edwards, Sue; Krasnow, Rose; tbrown@linowes-law.com; Councilmember.Knapp@MontgomeryCountyMD.gov; catherine.matthews@montgomerycountymd.gov; nancy.hislop@montgomerycountymd.gov; Berlage, Derick; Coleman, Joyce
Subject: December 8th Meeting - Follow-up

Hello, Kim.

The CTCAC met on December 13th to review the new retail site concept as presented by Newland on December 8th. All were pleased with the direction Newland is taking relative to the overall design, yet we still have some outstanding concerns.

Understanding your desire to move quickly towards a site plan hearing, we did not want to wait until after the holidays to submit our comments to you. The attached letter outlines our comments regarding the new concept. We will await your response as to a follow-up meeting or other appropriate next steps.

In the interim, we wish you a Merry Christmas/Happy Holidays.

Sincerely,

Amy Presley

8/13/2005

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Monday, January 24, 2005 3:14 PM
To: Witthans, Wynn
Cc: Ma, Michael; Krasnow, Rose; Carter, John; Edwards, Sue; Maskal, Nellie; Shileykim@aol.com; smithcar@mail.nih.gov
Subject: Re: December 8th Meeting - Follow-up

Hello, Wynn.

Thanks for the information. As discussed with Derick, we will respond again in writing relative to the height issues and will also request a full board hearing.

Please give us confirmation when you have it regarding the hearing date.

Sincerely,
Amy

8/13/2005

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Wednesday, January 26, 2005 1:54 PM
To: MCP-Chairman
Cc: Krasnow, Rose; Ma, Michael; Withhans, Wynn; Carter, John; Councilmember.Knapp@MontgomeryCountyMD.gov; Shileykim@aol.com; smithcar@mail.nih.gov; nnagda@ENERGENconsulting.com; JJackman@wtplaw.com; jersub13@yahoo.com; timdearros@comcast.net; rdefrehn@nccmp.org; murfs@comcast.net; Lfantle@aol.com; cariandjeff1@comcast.net; sendtriciamessages@msn.com
Subject: CTC Development - Height Violations

Dear Mr. Berlage:

Please find attached a letter from the CTCAC to you requesting a Board hearing relative to height violations within the Clarksburg Town Center. We have also attached the letter we received from Rose Krasnow, along with our response comments embedded. Further we have attached a supporting document table and notations.

We appreciate your attention to this and will await your response.

Sincerely,
Amy Presley, on behalf of the CTCAC

8/13/2005

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

January 25, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Subject: Building Heights in Clarksburg Town Center
 Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Mr. Berlage:

We are writing to you in response to the letter we received from Rose Krasnow relative to height violations within Clarksburg Town Center development. The Clarksburg Town Center Advisory Committee (CTCAC) has reviewed the letter and is astounded by the determination of the Staff on this issue.

The CTCAC, and the entire Clarksburg community, had placed its faith in M-NCPPC, expecting M-NCPPC to faithfully serve as guardians of the Master Plan intent and to ensure adherence to the Board-approved Project Plan. Unfortunately, we find not only that the M-NCPPC Staff has been grossly negligent in the Site Plan review process, but, based on the subsequent Staff determination regarding the height violations, has fallen abysmally short of serving the citizens of Clarksburg. Therefore, we respectfully request a full Board hearing on this issue.

For your record, we have attached a copy of Rose's letter with our specific response to each point. We have also attached our document reference table highlighting supporting detail for our case and position on the matter.

We would like the Board to consider this letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 59-D-3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse.

Please respond to us with the earliest possible date and time for scheduling of a full Board hearing on this issue. In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10th will be greatly appreciated.

Sincerely,

Amy Presley, Kim Shiley, Carol Smith, CTCAC Co-Chairs,
on behalf of the CTCAC

Ms. Amy Presley
(On behalf of CTCAC)

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Ms. Presley,

Thank you for your continued interest in the regulatory plan approvals for the Clarksburg Town Center.

At the December 13, 2004 meeting between M-NCPPC Staff and representatives of CTCAC, you and the other CTCAC members present expressed your collective view that the developer of the Clarksburg Town Center knowingly submitted a site plan that deviated from the project plan conditions and findings, specifically with respect to the heights of certain buildings. As you CTCAC did not state that the developer knowingly submitted a site plan that deviated from the Project Plan. We did state that the Developer would have been well aware of the Data Table height conditions, as contained within the Project Plan findings and that perhaps the Developer's submission of "four stories" was deliberately vague. We also pointed out that, even with a Site Plan that stated "four stories," a building "storey" would still be subject to the height limitations defined for "four stories" in the Data Table of the findings contained within the Board-approved and adopted Project Plan. You also stated your opinion that, pursuant to the optional method of development in the RMX-2 zone, under which Clarksburg Town Center was approved, the site plan conditions and findings are tied to and are not severable from the Project Plan. This is not merely the opinion of CTCAC. It is the Planning Board's determination according to the language of Condition 14 of the Board-approved Preliminary Plan. Under Condition 14, it is stated that:

"The Preliminary Plan shall remain in force and effect until the Preliminary Plan and Project Plan are approved by the Board. The Board shall review the components of the approved Preliminary Plan and shall be required to submit a report to the Board."

In light of this, you have requested that the Commission issue a notice of violation.

Following a review of all the pertinent documents (specified which pertinent documents did the staff find?) CTCAC has attached pertinent document information and requests that the Board review and copy specifically to the sections highlighted and also to our response to this letter relative to the height violations.) and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 ("Site Plan") is consistent with Project Plan No. 9-94004 ("Project Plan"); (2) that finding was properly made (We would like specific accountability and explanation as to why a revised Data Table was created and submitted to the Board along with Wynn Wilman's Site Plan Review submission, rather than using the Data Table contained in the Board-approved and adopted Project Plan findings. We maintain that, based on submission of erroneous Data Table information, the finding could not possibly have been "properly made" by the Board.); and (3) the buildings in question comply with all

conditions and development standards attached to the Site Plan. (The building in question may or may not comply with conditions and standards of the Site Plan itself, but that Site Plan is subject to the requirements of the Ordinance, Office of Development under which, come there be, the Project Plan is mandatory.) **Having so concluded, Commission Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so.** (It has been stated to CTCAC members, on more than one occasion and by more than one person within V-NCCTC – including Michael A. A. Wyer, Wilfrids and Lisa Marie Berlage, that the action, or lack of appropriate action surrounding the submission and approval of the Site Plan in question was an “oversight” on the part of V-NCCTC – and that “V-NCCTC will do all it can to avoid such oversight in the future.” Based on these admissions, it is incumbent upon V-NCCTC to call the error out as such and to all in its power to rectify the situation including calling back into review the other Site Plans erroneously approved. Not to take such actions constitutes negligence on the part of V-NCCTC to abide by its own standards and procedural requirements.)

As you know, the approval of the Project Plan was subject to a number of conditions; however, the height of the buildings was not included as a condition of approval. (Height limitations were contained within the “findings” of the Board-approved Project Plan. The Conditions of the Preliminary Plan serve to support – under Condition #4 – the requirement to uphold the findings.) **Rather, the reference to a proposed height of forty-five feet was included parenthetically within the “Proposed” column of a table entitled “Data Summary: Clarksburg Town Center.” That table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. As you know, that table listed “four stories” under the “Required” column, which limitation is drawn from the Clarksburg Master Plan (“Master Plan”) Land Use Plan recommendations for the Town Center District.** (It is critical here to note that a specific definition of the “four stories” as proposed for the CTC development is shown within the “Proposed” column. This definition is stated as 45’ for residential and 50’ for commercial buildings. It is evident to the CTCAC, the CTC residents the CTC and the Clarksburg Community at large, that the “Proposed” heights were included as a means of ensuring development compatible with the scale and character of the Clarksburg Historic District. This reasoning was confirmed by John Carter, Chief of Community Based Learning. The necessity for and sensitivity to development compatible with the Historic District was clearly a driver throughout development of the Master Plan.

Within the “Ten Key Policies Guiding the Master Plan”:

1. “Town Scale of Development”

5. “Plan proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District”.....

Regarding compatibility of future development with the Historic District has been a guiding principle of the planning process. (Master Plan p28).

¹ The Zoning Ordinance permits higher density residential uses under the optional method in the RMX Zones, provided that they are in accordance with, among other things, the limitations contained in the applicable master plan.

Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment buildings (the reason is exactly why Community Based Planning felt it necessary to include a numerical cap within the Project Plan Findings submitted to and approved by the Board). The goal of assuring compatibility with the future development of the historic district in the future was a driver for a definition of the height limitations within the Project Plan Findings, stating in relevant part only that “[a]ll apartment buildings in the future Town Center will be four stories or less . . .” **Clarksburg Master Plan p. 44 (emphasis added).** Therefore, the proposed “four-story” limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation (however, this limitation was not deemed sufficient by Community Based Planning at the time of preparing the Project Plan Findings). Community Based Planning felt that “four stories” as allowed within the Master Plan and RMX-2 Zone, without a specified height cap, was sufficient language to ensure future development compatibility with the Historic District; they would not have specified a 40’ residential and 50’ commercial height cap within the Data Table contained within the Findings of the Project Plan.) **In the Site Plan staff report, the proposed height limitation for residential buildings was similarly set at four stories, however, no specific numerical limitation was recommended** (Please note that the Development Review Staff reserves the right to independently and arbitrarily change or omit at the Plan Review Staff discretion any of the requirements, conditions and findings previously approved by the Board and contained within the Project Plan. If the Staff intended to do such, it would have been required to create an Amendment. Under the rules and guidelines for an Amendment, a change of this nature would not have been allowed without a public hearing. There is no existing documentation of any amendment to the Project Plan Findings. Please refer to document table and pertinent notes attached to 59-1-7-0.) **It was, and continues to be, Commission Staff’s view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan** (It is astounding to the Board that the Commission Staff’s decision that “no specific numerical limitation is necessary” According to Article IV of the Board, by way of approval of the Project Plan Findings, it is necessary for development within the City to conform to the “specific numerical limitations” contained within the Project Plan Findings as proposed and adopted, not just the Master Plan and Zoning Ordinances in general. It is a necessity for all development within the Clarksburg Town Center, under the Optional Method of Development, to comply with the requirements, conditions and findings of the Project Plan); **and, moreover, that a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval** (The Project Plan was approved with findings requiring a specific delineation of the height for those “proposed” four stories. The finding with a specific delineation of “four stories” on the Site Plan, it must be emphasized, and if not then confirmed by Development Review, that those “four stories” would be in compliance with the specific definition of “four stories” as proposed within the Board approved and adopted Project Plan Findings. Please refer to the Project Plan Findings Data Table and our document table and pertinent notes attached.). **On Staff’s recommendation** (Staff submitted to the Board a revised Data Table along with its recommendation. This Data Table was inconsistent with the Data Table contained in the Project Plan Findings previously approved by the Board. It

removed from the "minimum" standards for the CTC Development, and the actual height caps of 48' for residential and 50' for commercial. Submission to the Board of this revised Data Table represents, at best, gross negligence on the part of the Development Review Staff preparing the report. At worst, it represents action which could appear as being unduly influenced by the Developer. In either case, it was due to the submission of erroneous information to the Board, resulting in an erroneous approval of the Site Plans submitted. This action alone is cause for re-examination of the Site Plans and previous approval process, and grounds, in the opinion of CTCAC, for action under Zoning Ordinance §9-2-3.6), **the Board determined that the Site Plan was consistent with the Project Plan** (based on erroneous information presented by the Staff), **which determination necessarily includes a finding that the proposed height limitation of four stories in the Site Plan is consistent with that proposed in the Project Plan** (only because Staff conveniently removed the height caps that were present in the Data Table contained in the Project Plan previously approved by the Board. The CTCAC requests a full investigation of this action and accountability from M-NCPPC regarding the matter).

The Site Plan constitutes a detailed review of the proposed project and assigns the final site plan data limits, with which limits the buildings must conform, in order to comply with conditions of the building permit (According to M-NCPPC's own statements to the CTCAC, it is customary and expected that documents from the Master Plan through to the Site Plan follow an increasing level of detail. It is that the Site Plan should show a level of detail even greater than that of the Project Plan. The Project Plan, according to the Board's review and statements within the Preliminary Plan, serves as the "development authority" for the CTC development. Please refer to our document table and notations attached. Without a specific definition of the "four stories" shown on the Site Plan in question, the Staff would either have had to assume that those "four stories" would comply with the previously defined and approved height caps as contained within the Project Plan, or would have had to seek definition from the Developer. It is the responsibility of the Development Review Staff to ensure that Site Plans submitted comply with Project Plan conditions and findings. It is the duty of the Staff to report responsibly to the Board, as the Board relies on the Staff's review and opinions. As we have stated, we believe the Staff's actions relative to the submission represent a gross negligence at best.) **With respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards** (but they DO NOT COMPLY with the Project Plan findings, which are the "underlying development authority" for CTC development, according to the Board); **and, therefore, in Commission Staff's view** (The Commission Staff's view was based on erroneous information), **the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations.**² At the December 13 meeting, there appeared to be consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation (There was no such consensus--there was merely a reporting to the CTCAC by Wynn Withams, and a confirmation by Michael Ma, that the Site Plans in question did not specify height detail, that they merely noted "four

² It is, of course, outside of the scope of the Commission's authority to make a determination as to compliance with a building permit. Such a determination is properly made by the Montgomery County Department of Permitting Services.

stories.” (C/C’s letter also presumes that the information shared was accurate) —it only specifies that the buildings will be four stories—and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the “two-story over two-story” (2/2) buildings) are in conformance (there is confirmation that the title blocks submitted stated and affirmed that the buildings planned to be built are “four stories” does not constitute conformance with the “three-story buildings” to which all development within the district must conform) with the Planning Board’s approval of the Site Plan.

We appreciate your interest in the Clarksburg Town Center community and recognize that you have a strong vision of what that community should look like. (Our “vision” is merely what is defined by the Master and Project Plans. It also is the community’s vision, as incorporated into those plans by Community-Based Planning.) It is also the Board-approved vision that Development Review has a duty to uphold in the Site Plan review process.) **These four-story buildings are, apparently, taller than what you had anticipated** (they are taller than the Community-Based Planning and specifications based on the Historic District’s sensitivity to the scale and character of that district, and what the Board had previously approved based on the project’s findings) **and may, therefore, intrude on that vision** (C/C’s R/VOL 1000 “The building towers above everything within the development, totally out of character with the Historic District and also incompatible with adjacent residences.” The Board must not allow further development of this scale. We implore the Board to stop work on other buildings not yet built, but also erroneously approved in previously submitted title plans.) **However, for the reasons stated above, we have concluded that there exists no basis upon which the Commission can cite the builder or developer for a violation of the regulatory approvals; and, furthermore, any question concerning a potential violation of a condition of the permit is outside of the Commission’s authority.** (We remain in disagreement as to the existence of a violation of the C/C’s conditions in full Board hearing on this issue, as there were clearly several internal violations relative to C/C’s standard procedures and specifically relative to the “Data” and “Criteria” in the Site Plan review submission by Development Review Staff to the Board for approval.)

As you know, site plan proposals for the amendment of Phase I (8-98001E) residential and Phase III (8-04034) retail are still pending. The proposals consist of an amendment for a new site plan for the commercial area; and, additionally, an amendment to both Phase I and II residential site plans, in order to modify the “Manor Homes” from 9 units to 12 units. We encourage you to make your views known to Commission Staff and the Planning Board as we proceed with the review and consideration of these amendments.

Please contact me if I can be of any further assistance. My Staff will inform you of our future Planning Board dates and will be available to meet with you on the projects currently under review.

Sincerely,

Rose G. Krasnow
Development Review Chief
Maryland National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
(p) 301 495-4591
(f) 301 325-3462
rose.krasnow@mncppc-mc.org

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Clarksburg Town Center Development – Documentation Relative to Height Restrictions

| Document | Approvals | Pertinent Data | Notes |
|--------------|--|---|---|
| Master Plan | Planning Board Approval - June, 1994 | <p>Within the "Ten Key Policies Guiding the Master Plan":</p> <p>1. "Town Scale of Development"</p> <p>6. "Plan proposes a transit-oriented, multi-use <i>Town Center</i> which is compatible with the scale and character of the Clarksburg Historic District"</p> <p><i>"Assuring compatibility of future development with the historic district has been a guiding principle of the planning process."</i> (p26)</p> | <p>The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan findings. This is apparent, as the existing RMX2 guidelines would have been sufficient, and not required explicit specification of height limitations, had Community Based Planning felt that "4 stories" was adequate language to ensure "scale and compatibility" with the historic district.</p> |
| Project Plan | Planning Board Approved – May 11, 1995 | <p>"Based on the oral testimony, written evidence submitted for the record, and the staff report, the following conditions and findings are hereby adopted."</p> <p>"Finding #1: The Planning Board finds that Project Plan #9-94004 as conditioned meets all of the purposes and requirements of the RMX2 zone. A summary follows that compares the development standards shown* with the development standards required in the RMX2 zone." (Page 1 of the Project Plan).</p> <p><i>*(i.e. those proposed for CTC)</i></p> <p>The findings include the data sheet outlining the standard RMX2 zone height ("4 stories") with the proposed heights for Clarksburg Town Center:</p> <p>" 4 stories/45' " for residential buildings</p> <p>" 4 stories/50' " for commercial buildings</p> | <p>The Project Plan includes a data table outlining the permitted standards under RMX2 development (as was also outlined within the Master Plan) compared to the specific limitations proposed for the Clarksburg Town Center. This data table specifically denotes a limit of 45' for residential buildings and 50' for commercial buildings.</p> <p>Compatibility with the "scale and character" of the Clarksburg Historic District was unarguably one of the "guiding principles" behind the Master Plan (and adamantly promoted by the Clarksburg Civic Association, the Historic Society and others who participated in the planning process). The specific height limitations were included within the data sheet of the Project Plan to ensure the desired compatibility with the historic district. John Carter, Nellie Maskall, and Michael Ma have all confirmed that the data sheet attached to the approved Project Plan is valid. It was included within the Project Plan to ensure compatibility with the historic district and, having been approved with the Project Plan "findings," the limitations within the data sheet become</p> |

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| | | | "necessary elements" of development for Clarksburg Town Center. |
| Preliminary Plan | Planning Board Approved – March 26, 1996 | <p>Background: "...the underlying development authority, Project Plan #9-94004, was approved by the planning board on May 11, 1995, after two prior planning board meetings (held on April 6 and 20, 1995). The record for the preliminary plan #1-95042 specifically includes the records from those prior hearings...</p> <p>Therefore, the planning board approves the plan. The approval is subject to the following conditions:</p> <p>...</p> <p>#14. "Preliminary plan #1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan #9-94004. Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable."</p> | <p>The Planning Board itself determined all conditions, findings, or "requirements", as outlined in the Project Plan to be "essential components" of the approved plans and "NOT automatically severable." Therefore, the data sheet containing height definitions of 45' for residential and 50' for commercial can neither be ignored at Site Plan approval, nor arbitrarily over-ridden by any member of the M-NCPPC staff or by the developer. (See definition of "Minor Amendment" under Zoning Ordinance #59... Removing the height definitions would NOT be considered a Minor Amendment – i.e. not allowable without amendment hearing.)</p> |
| Montgomery County Zoning Ordinance #59 | Various dates of acceptance/ amendment | <p>59-C-10.2 Methods of Development 2. Optional Method of Development –</p> <p>Under this method, general commercial uses and higher density residential uses are allowed in the RMX zone provided they are in accordance with the provisions of Section 59-C-10.3 as well as the density, <i>numerical limitations</i> and other guidelines contained in the applicable Master Plan approved by the district Council. In addition, a Project Plan and Site Plan must be approved by the Planning Board.</p> <p>59-C-10.3 Optional Method of Development Regulations –</p> <p>This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County. <i>This method of development is a means to encourage development in accordance with the recommendations and guidelines of approved and adopted Master</i></p> | <p>The Optional Method of Development, is the option under which CTC is zoned for RMX2 development. This option explicitly requires adherence to the Master Plan/Project Plan and Site Plans in accordance with the Project Plan.</p> <p>According to 59-C-10.2, #2, under the Optional Method of Development, the commercial uses and higher density residential uses are allowed only provided that they are in accordance with "<i>numerical limitations</i>" and guidelines of the plans approved.</p> <p>59-C-10.3 states that the Optional Method of Development is a "means to encourage development in accordance with" recommended guidelines. (Clearly shows the intent to regulate development under "Optional Method" vs. leaving development open to interpretation under general</p> |

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| | | <p><i>Plans.</i> Approval of this optional method of development is dependent upon the provision of certain public facilities and amenities by the developer. The requirement for public facilities and amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone.</p> <p>59-C-10.3 Optional Method of Development Regulations – This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County...</p> <p>59-C-10.3.11 Development Procedure – A. The procedure for approval for an <i>optional method of development in these zones requires a Project Plan in accordance with division 59-D-2 and a site plan in accordance with division 59-D-3.</i></p> <p>59-D-A-2 – Optional Method requires a Project Plan and Site Plan ... precondition for the use of the optional method of development</p> <p>59-D-3-23 – Proposed Development – ... (Referencing what must be included within the site plan) ... (a) The location, height, ground coverage and use of all structures.</p> <p>59-D-3.4 – Action by Planning Board (1) ...the Site Plan is <i>consistent with an approved development plan or a Project Plan for the Optional Method of development</i>, if required... (4) ...each structure and use is <i>compatible with other uses and other site plans and with existing and proposed adjacent development.</i></p> <p>59-D-2.6 Amendment: Minor Plan Amendment A minor amendment is an amendment or revision to a plan or any findings, conclusions, or</p> | <p>RMX2 requirements.) Once again, it is apparent that this is why a data sheet denoting the guidelines for development of CTC, including specific height parameters, was included within the Project Plan and subsequently adopted by the Planning Board.</p> <p>Under the Optional Method of development within RMX2 zoning, the Project Plan is an authoritative document. This is explicit under 59-C-10.3.11, as is the requirement for a site plan in accordance with 59-D-3 – requiring that "height" and use of all structures must be noted. As "4 stories" is merely a standard for RMX2 in <i>general</i>, and the approved Project Plan included a data sheet with <i>specific</i> height parameters, under the Optional Method of Development (according to 59-C-10.3.11, 59-D-A-2, and 59-D-3-23) the heights for any structures within a site plan must be in accordance with height definitions/limitations outlined and approved within the Project Plan Findings.</p> <p>(It is clear that the change in height within Wynn Withan's documentation does not constitute a Minor Amendment, according to 59-D-2.6. Even if</p> |
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| | | <p>conditions associated with the plan <i>that does not entail matters that are fundamental determinations assigned to the Planning Board.</i> A minor amendment is an amendment that <i>does not alter</i> the intent, objectives, or <i>requirements expressed or imposed by the Planning Board</i> in its review of the Plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.</p> <p>59-D-3.6 Failure to Comply If the Planning Board finds for any plan approved under this section on its own motion or after a complaint is filed with the Planning Board or the department that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board after due notice to all parties concerned, and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan... The Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50... Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use and occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.</p> | <p>Wynn were to position this as a "Minor Amendment" there is no documentation – i.e. approval "in writing by the Planning Board staff" to support that as a deliberate action by the Planning Board staff.)</p> <p>If the site plan, as confirmed by M-NCPPC staff members (Michael Ma, Wynn Witthans, Rose Krasnow), merely showed "4 stories" as the height notation for the buildings in question, even as approved by the Planning Board, it still does not authorize those "4 stories" to exceed the height limitations as defined within the Project Plan findings and approved by the Planning Board. Under the "Optional Method of Development" the Developer is still obligated to ensure that the "4 stories" comply with the conditions and findings of the Project Plan. The Planning Board is also obligated to enforce those conditions and findings.</p> |
| <p>Site Plan Review (Wynn Witthans' - Staff Report submission & Planning Board Opinion)</p> | <p>Planning Board Opinion - January 22, 1998</p> | <p>Site Plan Review: Staff Recommendation; Proposal</p> <p>Findings for Site Plan review (Page 35): "#1 Site Plan is consistent with the Project Plan approved for this site utilizing the RMX2 optional method of development. (See discussion above.) #2 The Site Plan meets all of the</p> | <p>This is the excerpt from the Staff Report prepared by Wynn Witthans and presented to the Board for approval of the Phase 1 Site Plan.</p> <p>"Within Wynn's Staff Opinion, submitted as part of the site plan review documentation for the Board, is a data table that varies from the data table included in</p> |

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| | | <p>requirements of the zone in which it is located. (See project data table* above.)"</p> <p>Planning Board Opinion: "Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:</p> <p>#1. The site plan is consistent with the approved development plan or a Project Plan for the Optional Method of Development, if required.</p> <p>#2 The site plan meets all the requirements of the zone in which it was located."</p> | <p>the approved Project Plan (as part of the "Findings" deemed by the Board to be "essential" components of the Project Plan). The data table that Wynn submitted with her Staff Opinion appears to have been re-written to show a generic "4 stories" denotation for building heights, omitting the specifications of "45' for residential" and "50' for commercial." The first and only appearance of this altered data table among M-NCPPC documentation is within Wynn's Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden Community Based Planning's recommendations, as well as the "Findings" approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent, at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer's desires.</p> <p>Again, as stated within our Zoning Ordinance notes, even in the presence of a generic "4 stories" denotation on the altered data table and/or the submitted Site Plan, the Developer is still accountable to ensure that the "4 stories" are in compliance with the height restrictions of the approved data table/findings as part of the approved Project Plan. Also, according to zoning ordinance for Optional Method, and the Planning Board's own Findings, M-NCPPC is still accountable to enforce the limitations/ guidelines contained within the approved Project Plan Findings. There is no language within the Site Plan Review Staff Report or the Board Opinion that negates the Data Table ("Finding") of the Project Plan -- i.e. that the "4 stories" shown on the Site Plan must be in compliance with the heights as defined -- 45' for residential buildings and 50' for commercial</p> |
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| | | | buildings. |
| Site Plan Enforcement Agreement | Montgomery County Planning Board, Linnowes & Blocher, LLP (legal counsel for the Developer) & Piedmont Land Associates (Developer) March 18, 1999 | <p>(Page 1)</p> <p>"Whereas, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as part of the site plan review process that <i>applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23</i> of the Montgomery County Code...."</p> <p>"Whereas, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1994... Now, therefore, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1994.... the parties hereto agree as follows:</p> <p>1. In accordance with approval by the Planning Board of Site Plan No. 8-98001, <i>Developer agrees that, when it commences construction on any phase as set forth in the Development Program attached hereto as Exhibit "B", or any amendments thereto, it will execute and maintain all the features of the site plan for that phase as required by Section 59-D-3.23 in fulfillment of the approval granting Site Plan No.8-98001, and any subsequent amendments approved by the Planning Board....</i></p> | The Developer and its legal counsel were aware of the conditions for development of RMX2 under the "Optional Method" of development. The Project Plan (including all conditions and findings) is the recognized and underlying authority. 59-D-3 requires height specification, as well as assurance that buildings are consistent with the approved Project Plan. |

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Tuesday, February 01, 2005 2:16 PM
To: Witthans, Wynn
Cc: MCP-Chairman; Krasnow, Rose; Ma, Michael; Carter, John; Edwards, Sue; Maskal, Nellie; Councilmember.Knapp@MontgomeryCountyMD.gov; Shileykim@aol.com; smithcar@mail.nih.gov
Subject: Re: CTC Development - Height Violations

Hello, Wynn.

The email to which you responded was sent to Derick Berlage at his request. As noted in the email and letter to Derick, however, we are asking for a Board hearing on the height issue, not information relative to the Amendment hearing. We have requested a specific hearing on the height violation issues and would not expect that the matter could be covered appropriately during the Manor Home/Amendment hearing. Derick was aware of our desire for a hearing and advised us to send the response to Rose's letter, along with our request for the hearing, directly to him.

I have made no other inquiries as to the Manor Home/Amendment hearing, as you had already informed us of that meeting date. We would likely not schedule time for ourselves to speak at that hearing if we are going to have a separate, specific hearing with the Board relative to height violations. If your email implies that time for a hearing on that matter could be made available on Friday, Feb. 11th, that would be more appropriate and would work for our group. Please confirm the date, and a time that can be made available for the hearing.

Thank you for your assistance.

Amy Presley
 on behalf of the CTCAC

In a message dated 2/1/2005 12:40:55 PM Eastern Standard Time, Wynn.Witthans@mncppc-mc.org writes:

Subj: RE: CTC Development - Height Violations
Date: 2/1/2005 12:40:55 PM Eastern Standard Time
From: Wynn.Witthans@mncppc-mc.org
To: Synergiesinc@aol.com
Sent from the Internet

The Planning Board will be scheduled for the Manor Homes on February 10th. Phases One and Two will be heard as one item. A tentative 6:00 pm will be available on Friday early afternoon.

I am aware that you already know this as you and your group have been in contact with others in our agency with various questions. If you would prefer to receive answers to your questions more directly, I invite you to contact me directly. Then my colleagues won't have to ask me and then get back to you!

Wynn Witthans
 Development Review

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]
Sent: Wednesday, January 26, 2005 1:54 PM
To: MCP-Chairman
Cc: Krasnow, Rose; Ma, Michael; Witthans, Wynn; Carter, John; Councilmember.Knapp@MontgomeryCountyMD.gov; Shileykim@aol.com; smithcar@mail.nih.gov;

8/13/2005

nnagda@ENERGENconsulting.com; JJackman@wtplaw.com; jersub13@yahoo.com; timdearros@comcast.net;
rdefrehn@nccmp.org; murfs@comcast.net; Lfantle@aol.com; cariandjeff1@comcast.net;
sendtriciamessages@msn.com
Subject: CTC Development - Height Violations

Dear Mr. Berlage:

Please find attached a letter from the CTCAC to you requesting a Board hearing relative to height violations within the Clarksburg Town Center. We have also attached the letter we received from Rose Krasnow, along with our response comments embedded. Further we have attached a supporting document table and notations.

We appreciate your attention to this and will await your response.

Sincerely,
Amy Presley, on behalf of the CTCAC

8/13/2005

Krasnow, Rose

From: Shiley, Kimberly A [KShiley@psc.gov]
Sent: Thursday, February 17, 2005 5:14 PM
To: Witthans, Wynn; Krasnow, Rose; Ma, Michael; Synergiesinc@aol.com; 'smithcar@mail.nih.gov'; 'mcp-chairman@mncppc-mc.org'
Cc: 'lpowell@cpja.com'; 'cwagner@bozzuto.com'
Subject: Condominium Architectural Elevations

Hi Wynn

Thank you for your phone call yesterday. I am a private agency (indivdual) and speaking with you, I immediately called you again for your assistance. I stated that I felt it is necessary for me (on behalf of the CTCAC) to obtain the information from the departments of the NCPPC. To re-cap the conversation we did have, you stated that

architectural elevations do not have to be submitted by the builders to you for site plan approval.

That you may have the drawings of the elevations, but would have to check on them and their whereabouts, and

that you definitely did not have 2 over 2 architectural elevations.

Your suggestion to provide the architectural elevations from the builder, Bozzuto, is good. This leaves me confused and frustrated as the NCPPC is a non-profit funded governmental entity that is supposed to serve the County's residents and communities. It does not seem appropriate for me to be directed to contact the individual private entities (the builders) for such information.

Can you suggest a more appropriate way for me to receive the information I need relative to the elevation drawings? If you do have those on file, requesting them from the builders as part of the site plan review process or from behind, I would be appreciative of your assistance in making such info available to the CTCAC.

Kim Shiley
 on behalf of CTCAC

-----Original Message-----

From: Shiley, Kimberly A
Sent: Thursday, February 17, 2005 5:09 PM
To: Shiley, Kimberly A
Subject: FW: Elevations

-----Original Message-----

From: Shiley, Kimberly A
Sent: Tuesday, February 15, 2005 8:56 AM
To: 'wynn.witthans@mncppc-mc.org'
Cc: 'michael.ma@mncppc-mc.org'; 'rose.krasnow@mncppc-mc.org'; 'Synergiesinc@aol.com'; 'smithcar@mail.nih.gov'
Subject: Elevations

Hi Wynn

Les Powell tells us that all elevations are submitted to Park and Planning during Site Plan submission.

The CTCAC is requesting copies of all elevations relative to the Bozzuto Condominiums (Buildings 1, 2, 3, 4 (all Phase 1B-3), 5, and 6 (both Phase 2A)) and the Craftstar 2 over 2 Condominiums (Parcels B and N in Phase 2B and Parcels B, Blk M and Blk L, both Phase 2C).

If we need to contact another party, please advise. We are requesting to receive these elevations prior to the 24th of February.

8/13/2005

Thank you for your assistance.
Kim Shiley
for CTCAC

p.s. also, if you are aware of the date for the threshold hearing, please advise. thank you again.

8/13/2005

Krasnow, Rose

From: Shiley, Kimberly A [KShiley@psc.gov]
Sent: Thursday, February 24, 2005 2:02 PM
To: Krasnow, Rose
Subject: RE: Threshold Hearing/CTC

Thank you Rose

We really appreciate your efforts in getting me and John to the hearing. John was there and able to help me yesterday as I made a speech. I was able to get to the hearing and only had to go to the 420. Please pass on to Wynn that I appreciate the help in getting to the hearing from Craftstar and finding the Board members. I hope to see you at the CTC day tomorrow. Love, Thanks and we look forward to seeing you all on the 17th of March.

Kim Shiley

for CTCAG

-----Original Message-----

From: Krasnow, Rose [mailto:Rose.Krasnow@mncppc-mc.org]
Sent: Thursday, February 24, 2005 9:06 AM
To: Shiley, Kimberly A
Subject: RE: Threshold Hearing/CTC

Kim,

I appreciate your interest in setting a date for the Threshold Hearing regarding height issues in Clarksburg Town Center. The date has not yet been officially set for Thursday, March 17, 2005. Official notices will be sent out on Friday, March 18th. Please let me know if you have any other questions regarding this matter.

I am glad that Michael was able to help you with the copies you needed yesterday!

Rose Krasnow

-----Original Message-----

From: Shiley, Kimberly A [mailto:KShiley@psc.gov]
Sent: Tuesday, February 22, 2005 12:21 PM
To: Krasnow, Rose; Carter, John; 'susan.edwards@mncppc-mc.org'; MCP-Chairman; 'councilmember.Knapp@MontgomeryCountyMD.gov'
Cc: Synergiesinc@aol.com; 'smithcar@mail.nih.gov'; Shileykim@aol.com
Subject: Threshold Hearing/CTC

Hello Rose,

When we last spoke, you advised me that there would definitely be a hearing regarding the height issues most probably on March 3, with a slight possibility for February 24. I understand that the March agenda has been determined, yet our Threshold Hearing has still not been scheduled.

I am writing you today because it is imperative that we receive a response from M-NCPPC regarding the proposed hearing date. While we wait, foundations are being laid for more of the buildings in question. This is very disturbing and leads us to question whether we must escalate this through other channels in order to receive a board hearing in a timely manner, or potentially have stop work orders issued.

I am respectfully asking that a date be determined this week; in fact, prior to Thursday afternoon (in

8/13/2005

time for our CTC residents' update meeting). Your immediate response is appreciated.

Kim Shiley,
for CTCAC

8/13/2005

Krasnow, Rose

From: Shiley, Kimberly A [KShiley@psc.gov]
Sent: Tuesday, April 05, 2005 5:05 PM
To: Witthans, Wynn; Krasnow, Rose; Ma, Michael
Cc: 'synergiesinc@aol.com'; 'Smith, Carol Leigh (NIH/NCI)'
Subject: follow up to stamped drawings

Wynn,
Hello again.

I arrived yesterday to pick up the stamped drawings and encountered a series of issues I feel you should be made aware of.

When I arrived, rather than a set of pertinent stamped drawings regarding the amendments, I was given several voluminous folders which I then had to sort through. This was not what I was expecting based on our conversation earlier that morning, and was, as you might expect, rather time-consuming. If I had been told that this would be necessary, I would have put additional time on my parking meter and avoided the parking ticket I received. However, based on our earlier conversation (where you stated that revisions were identified as A, B, C, D etc., corresponding to marked revisions on your map and, therefore, in a seemingly orderly fashion) I had paid for 30 minutes, which should have been adequate to come in and pick up the set of stamped drawings, have them copied and be gone.

The gentleman at the help desk was unable to provide any assistance to me in sorting through the documents, and did not know if these folders contained all of the pertinent materials. He stated that, per your instructions, these were the documents to be given to me and stated additional assistance would need to come from you. As a result, I still do not know if the materials I picked up yesterday are complete and comprehensive. However, it does not seem that they are, nor does it seem I was given complete stamped drawings for all changes/amendments (he could not locate folders other than A, B, & C).

I just felt it necessary to bring this to your attention and I will look for the mail delivered Hearing notification per your instructions on that issue.

Kim Shiley

8/13/2005

Krasnow, Rose

From: Shiley, Kimberly A [KShiley@psc.gov]
Sent: Wednesday, April 06, 2005 10:09 AM
To: Witthans, Wynn; Krasnow, Rose; Ma, Michael
Cc: 'synergiesinc@aol.com'; smithcar@mail.nih.gov
Subject: CTC

Hi Wynn,
Would you please forward to me today (April 6) via fax (301-594-2973) any further correspondence received by you (or via others at Park and Planning) relative to Clarksburg Town Center and/or the pending hearings.
Thank you,
Kim Shiley
p.s. I received the official notices yesterday via U.S. Postal service.

8/13/2005

Krasnow, Rose

From: Shiley, Kimberly A [KShiley@psc.gov]
Sent: Friday, April 08, 2005 10:24 AM
To: Witthans, Wynn; Krasnow, Rose; Ma, Michael
Cc: 'Synergiesinc@aol.com'; 'Smith, Carol Leigh (NIH/NCI)'
Subject: FW: CTC

Hi Wynn,

Please forward today (April 8, 2005) via email (kshiley@psc.gov) or fax (301-594-2973) any further correspondence you have received relative to CTC, (CTCAC) and/or the hearings. I appreciate your assistance with this request and the time you will have to take to do it, realizing that you are involved in a very busy week.

Thank you,

Kim Shiley

-----Original Message-----

From: Shiley, Kimberly A
Sent: Wednesday, April 06, 2005 10:09 AM
To: 'wynn.witthans@mncppc-mc.org'; 'Krasnow, Rose'; 'michael.ma@mncppc-mc.org'
Cc: 'synergiesinc@aol.com'; smithcar@mail.nih.gov
Subject: CTC

Hi Wynn,

Would you please forward to me today (April 6) via fax (301-594-2973) any further correspondence received by you (or via others at Park and Planning) relative to Clarksburg Town Center and/or the pending hearings.

Thank you,

Kim Shiley

p.s. I received the official notices yesterday via U.S. Postal service.

8/13/2005

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Sunday, April 17, 2005 10:39 PM
To: Krasnow, Rose
Cc: michelle.rosenfeld@mncppc-mc.org; Shileykim@aol.com; smithcar@mail.nih.gov; catherine.matthews@montgomerycountymd.gov; Councilmember.Knapp@MontgomeryCountyMD.gov
Subject: Friday, April 15 2005 - Follow-up

Hello, Rose.

I just wanted to thank you for responding to our request last Friday regarding the documents on file for Clarksburg Town Center. We appreciated your willingness to move all files to the care of your legal department, based on the issues and concerns we raised.

As stated by you, and confirmed with Michelle Rosenfeld, your office was unable on Friday to confirm to us whether or not the documents retrieved from Development Review represented all documents on file pertaining to Clarksburg Town Center or, specifically, to the amendments A-E for Site Plan #8-98001. We were advised that you had retrieved all available documents from Ms. Witthans office, but that you could not guarantee that there were not other existing documents in other locations. As we stated on Friday, this is of some concern to us.

In view of the recent height threshold hearing, and especially in view of our concern regarding the potential for documents to be misplaced or even "thrown away" by staff, we expressed to you our desire for copies of all available documents. We were able to begin our review and tagging process on Friday (indicating which of the documents we would like copied), but were unable to complete our work. Kim Shiley and I will continue that process on Monday, April 17.

We understand that you will check with Wynn Witthans on Monday morning to determine if other documents exist relative to Clarksburg Town Center, and that you will retrieve any such additional files and/or documents and store them with the others currently held in your legal department. As discussed and confirmed with Michelle, we will receive from the legal department on Monday a specific listing of any subsequent files or documents found, as well as information on the location from which any such files or documents are retrieved.

Thanks so much for your continued assistance. We look forward to seeing you on Monday.

Sincerely,
Amy Presley

8/13/2005

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Thursday, April 21, 2005 1:54 PM
To: Ma, Michael
Cc: Krasnow, Rose; Shileykim@aol.com; smithcar@mail.nih.gov; timdearros@comcast.net; Councilmember.Knapp@MontgomeryCountyMD.gov
Subject: Confirmation

Hello, Michael.

Thanks for taking the time to meet with me and Kim Shiley this morning...especially in view of your hectic schedule at this time.

We wanted to confirm with you our conversation and our requests for the following:

- Letter from your legal department stating what additional CTC documents, if any, have been retrieved and from what locations since last Friday. (If no others have been retrieved since last Friday, we would like a letter stating that according to their information from Development Review and Staff, there are no other documents existing other than those currently housed within the legal department conference room.)
- Letter stating whether there exists on file within M-NCPPC ANY amendment by Staff to the height requirements for CTC (height requirements as contained within the approved Project Plan, Preliminary Plan and subsequent Site Plan).
- Letter detailing the status of the setback hearing that was initially scheduled for 4/14/05 and then was removed from the agenda. We want to know specifically any and all actions taken by Staff (or any that may have been taken by the Department of Permitting Services - if M-NCPPC is aware of such) since the time you initially notified us of the hearing. We want to know whether actions have been taken to waive the setback requirement to enable occupancy of the 2/2's which had initially been denied occupancy permits. We would also like to know the status on other buildings in violation of the setback requirement (as you discussed with us several weeks ago when you advised us that the developer and builders had come forward to acknowledge multiple other violations to setbacks in addition to the 2/2's which were denied occupancy).
- We would also like a written update regarding actions currently being taken within your department relative to discrepancies in documentation and other issues we discussed pertaining to Staff. Understanding that you are still in the process of discussing these matters with Rose Krasnow, we realize that it may take a couple of days before you are able to respond on this. If you could provide an interim email update, that would be greatly appreciated.

As we mentioned to you, based on our follow-up research of Staff's testimony given during the April 14 height violation Threshold Hearing, as well as several new pieces of evidence, we we will be submitting a request for reconsideration (under Section 11 of the Rules of Procedure for the Montgomery County Planning Board). Your assistance in providing the aboved referenced letters and information before close of business tomorrow, or written notification as to why you are unable to do so, will be greatly appreciated.

Sincerely,
 Amy Presley
 301-916-7969 (office)
 301-526-7435 (mobile)

8/13/2005

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Friday, April 22, 2005 4:49 PM
To: MCP-Chairman
Cc: Krasnow, Rose; Ma, Michael; Councilmember.Knapp@MontgomeryCountyMD.gov; Shileykim@aol.com; smithcar@mail.nih.gov; jessicasteinhilber@yahoo.com; dfischer@abcbirds.org; dbfischer@starpower.net

Subject: Request for Reconsideration

Dear Chairman Berlage:

Attached please find an urgent Request for Reconsideration pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*. I am also sending a copy of this request via FAX to you to ensure that you receive a signed copy today.

We are in earnest relative to supplemental buildings within this development which are under construction and/or scheduled for construction and will also violate the Board-approved height limitations as set forth in the Project Plan, Preliminary Plan and Site Plan Signature Set #8-98001.

Your prompt response will be greatly appreciated.

Sincerely,
Amy Presley

8/13/2005

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

April 22, 2005

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: **Request for Reconsideration** of the Planning Board's April 14, 2005
Height Violation Threshold Hearing – Item #4: Site Plan Review No. 8-98001,
8- 98001B, and 8-02014, Clarksburg Town Center

Dear Chairman Berlage:

Pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*, the Clarksburg Town Center Advisory Committee (CTCAC) requests the Montgomery County Planning Board to reconsider its finding of April 14, 2005 that subject structures did not violate height restrictions set forth in Site Plan Review No. 8-98001, 8-98001B, and 8-02014. The Board incorrectly concluded that CTCAC's allegation of noncompliance did not have merit. CTCAC has recently discovered evidence that definitively documents incomplete, inaccurate, and/or misleading information contained in Ms. Wynn Witthans's April 8, 2005 staff report and April 14, 2005 presentation to the Planning Board. This information would have been vital to the Board's decision. In light of the seriousness of this new evidence, CTCAC requests that the Planning Board expeditiously grant our request for reconsideration.

Specifically, the Site Plan Enforcement Agreement (May 13, 1999) for Site Plan No. 8-98001, as signed by both Linowes & Blocher and the Developer, validates that the entirety of Clarksburg Town Center (CTC) Phase I was subject to Site Plan No. 8-98001 Signature Set and any amendments thereto. The Site Plan Signature Set No. 8-98001 is required to comply with Project Plan No. 9-94004, which includes height restrictions of 35' for single family residences and town houses and 45' for multi-family units. These height restrictions were proposed, and approved by the Planning Board in the Project Plan and become incorporated into the Site Plan through Condition #14 of the Project Plan.

Subsequent to Planning Board approval of the Project Plan, which includes height restrictions, Planning Board staff altered the Data Table containing the specific height restrictions to show only the general 4 story height restriction. This altered table was the basis, in part, of the Planning Board's April 14th decision. Importantly, this change was

not considered or approved by the Planning Board. Therefore, the Board-approved specific height restrictions are still binding.

The fact that the Site Plan Signature Set No. 8-98001 remains valid for the subject properties discussed at the April 14 hearing, and the height restrictions have not been amended, completely contradicts testimony presented by Ms. Witthans from Development Review. Furthermore, this fact is misconstrued on page 8 of the April 8th Staff Report.

In light of this new information, CTCAC requests the Planning Board to expeditiously reconsider its decision of April 14, 2005. With no valid amendments to relieve the Developer from the requirements set forth under Site Plan No. 8-98001, the Developer has breached the Site Plan Enforcement Agreement and violated the "Certified Site Plan" referenced within that Agreement. Thus, there is ample evidence to support CTCAC's allegation of noncompliance.

Sincerely,

Amy Presley
(on behalf of CTCAC)

cc: Fischer & Steinhilber

MCP-Chairman

From: Synergiesinc@aol.com
Sent: Wednesday, April 27, 2005 9:16 PM
To: MCP-Chairman
Cc: dbfischer@starpower.net; jessicasteinhilber@yahoo.com
Subject: Supplement to Request for Reconsideration

RECEIVED
APR 28 2005
OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dear Chairman Berlage,

Attached is a supplement letter to the CTCAC's April 22, 2005 Request for Reconsideration. I am sending a copy of the letter to you via email to alert you to our supplemental information. The hard copy of the signed letter and attachments was delivered to Michael Ma today for hand delivery to you.

Please contact me if you require further information prior to the Board's review of this request.

Sincerely,
Amy Presley, CTCAC
301-916-7969 (office)
301-526-7435 (mobile)

4/28/2005

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

April 27, 2005

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Supplemental Information pertaining to Request for Reconsideration
of the Planning Board's April 14, 2005 Height Violation Threshold Hearing –
Item #4: Site Plan Review No. 8-98001, 8- 98001B, and 8-02014,
Clarksburg Town Center

Dear Chairman Berlage:

As you are aware, Pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*, the Clarksburg Town Center Advisory Committee (CTCAC) submitted to the Board, on April 22, 2005, a Request for Reconsideration. Since that time, we have received additional documentation and evidence supporting our claims and worthy of review by the Board.

We have attached with this letter a copy of the Site Plan for Permit #301788 (Bozutto "Bldg. #3" discussed during the April 14, 2005 hearing) as retrieved from DPS. We have also attached a copy of the "MC Department of Permitting Services Building Review Detail – Page 1" denoting the date of review and approval by M-NCPPC.

Regarding these documents, please note the following:

- 1) The Site Plan clearly shows the height Data Table (the same Data Table from the Site Plan Signature Set #8-98001) with limits of "35' maximum" for single family homes and townhomes and "45' maximum" for multi-family buildings.
- 2) The Builder (Clark Wagner for Bozzuto), the Surveyor (Ronald Collier) and the Landscape Architect (Les Powell for CPJ & Associates, Inc.) all signed this document with height limitations apparent.
- 3) The Site Plan establishes that a "clean" copy of the Site Plan (i.e. no line drawn through the height restrictions in the Data Table) was in existence and received by DPS as late as April of 2003, and indicates that the Permit was drawn against a "clean" copy of the Site Plan.
- 4) The information contained in the Site Plan and Building Review Detail contradicts information presented by Staff and evaluated by the Board in its conclusion of "ambiguity" or "silence" relative to specific height restrictions for the Site Plan in question. This "ambiguity" was the basis, in part, for the Board's ruling (please refer to tapes of the April 14, 2005 hearing).

(continued)

CTCAC
April 27, 2004
Supplement to Request for Reconsideration
Page Two

We have reviewed these documents (and their implications) with M-NCPPC Legal Counsel, Tariq El-Baba, as well as Chief of Development Review, Rose Krasnow, and Director of Development Review, Michael Ma. We have also provided to Tariq El-Baba, via Michael Ma, copies of the same.

In light of this compelling supplemental support of our claims, the CTCAC respectfully requests immediate action by the Planning Board to reconsider its decision of April 14, 2005. Once again, we would like to remind the Board that we have been presenting valid information on the height violation issue to M-NCPPC since August of last year. We have, on multiple occasions, requested issuance of a Stop Work Order as provided for under Montgomery County Zoning Ordinance Sec.59-D-3.6. Yet, buildings in violation of the clearly defined Project Plan height restrictions and Signature Site Plan #8-98001 Data Table have continued to be built without intervention. Delay in rectifying this situation has been damaging to Clarksburg Town Center and to the citizens of Clarksburg. We look to the Board to uphold the approved Project Plan and to move quickly to rectify the situation.

Sincerely,

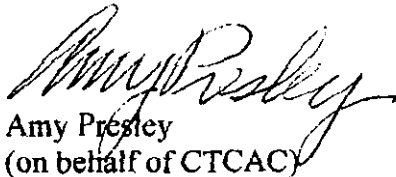
Amy Presley
(on behalf of CTCAC)

cc: Fischer & Steinhilber
Marlene Michaelson, County Council

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In light of this compelling supplemental support of our claims, the CTCAC respectfully requests immediate action by the Planning Board to reconsider its decision of April 14, 2005. Once again, we would like to remind the Board that we have been presenting valid information on the height violation issue to M-NCPPC since August of last year. We have, on multiple occasions, requested issuance of a Stop Work Order as provided for under Montgomery County Zoning Ordinance Sec.59-D-3.6. Yet, buildings in violation of the clearly defined Project Plan height restrictions and Signature Site Plan #8-98001 Data Table have continued to be built without intervention. Delay in rectifying this situation has been damaging to Clarksburg Town Center and to the citizens of Clarksburg. We look to the Board to uphold the approved Project Plan and to move quickly to rectify the situation.

Sincerely,



Amy Presley
(on behalf of CTCAC)

cc: Fischer & Steinhilber
Marlene Michaelson, County Council

MD Department of Permitting Services

255 Rockville Pike, 2nd Floor
Rockville, MD 20850-4166
(240)777-6300 Fax (240)777-6262

Building Review De**Report Date** 04/22/2005 11:05 AM**Submitted By**

P:

Act # 7645061 **A/P #** 301788 **Act Type** MNCPPC **MARYLAND PARK & PLANNING****Property Information****Address** 12824 CLARKSBURG SQUARE RD
CLARKSBURG MD 20871-**Location****Application Information****Type** COMBUILD **COMMERCIAL BUILDING** **Priority** **Type of Work** CONST **Dept of Commerce**
Square Footage 28750.00 **Declared Valuation** 2435000.00 **A/P Name**
Desc of Work**Initial Review****Issued Date/Time** 04/04/2003 08:13 **Issued By** YOE ☒ **System Generated**
Department **Assigned To** ☐ **Waived****Review Results****Reviewed By** CORNE ☒ **Approved** **Suspense Date**
Start Date/Time 04/17/2003 10:11 **Completed Date/Time** 04/17/2003 10:11 **Actual Time** 0.00**Comments**

No Comments

Problems

No Problems

Condition of Approvals

| | | |
|----------------------|--|--|
| Condition WSSC | Application Date 04/04/2003 08:13 | Approval Date 07/22/2003 08:36 |
| Assigned | Applied By YOE | Approved By YOE |
| Approval APPROV | <input checked="" type="checkbox"/> System Generated | <input type="checkbox"/> Supervisor Required |
| Comments | | |
| Condition STORM MET | Application Date 04/04/2003 08:13 | Approval Date 04/18/2003 14:39 |
| Assigned | Applied By YOE | Approved By BALL |
| Approval APPROV | <input checked="" type="checkbox"/> System Generated | <input type="checkbox"/> Supervisor Required |
| Comments | | |
| Condition SEDMNT REQ | Application Date 04/04/2003 08:13 | Approval Date 04/18/2003 14:40 |
| Assigned | Applied By YOE | Approved By BALL |
| Approval APPROV | <input type="checkbox"/> System Generated | <input type="checkbox"/> Supervisor Required |
| Comments 206452 | | |

Activity Review Details**Detail** COMM BLD REVIEW 1**Modified By** GIRON**Modified Date/Time** 04/28/2003 12:39**Comments**

No Comments

MEMORANDUM

RECEIVED
0752
MAY 18 2005

TO: Derick Berlage, Chairman, Montgomery County Planning Board

CC: Charlie Lochr, Michele Rosenfeld, Martin Klauber

FROM: Members of the Clarksburg Town Center Advisory Committee (CTCAC)

RE: May 13, 2005 Meeting Between CTCAC and Planning Board Staff

DATE: May 23, 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

As you may be aware, at the recommendation of the Planning Board, members of the Clarksburg Town Center Advisory Committee (CTCAC) met with Planning Board Staff and Martin Klauber to discuss the height and setback violations within Clarksburg Town Center and, specifically, the proceedings for dealing with such violations.

Based on input from Michelle Rosenfeld and Charlie Lochr, CTCAC understands that the Board has opted not to schedule the violation hearing until CTCAC constructs a proposed mitigation package and presents the package for discussion with the Developers/Builders. At the Board's request, Planning Board Staff will host a meeting with the CTCAC and Developer/Builders to discuss the mitigation package. CTCAC will submit the proposed mitigation package to Planning Board Staff prior to the meeting, which is to be confirmed for the week of May 23rd.

During the meeting, CTCAC requested of Staff information regarding the number of buildings confirmed to be in violation regarding setback and height, which Staff was not equipped to validate at that time. Rather, Staff asked the CTCAC members to provide Staff with information they have pertaining to the extent of the violations. While CTCAC members do not have access to a surveyor, we estimate that based on the Project Plan data table and Signature Site Plan Set data table (in addition to information contained in prior Staff reports confirming heights as submitted by the Developer) all buildings within CTC, with the exception of the Porten single family homes and some of the Miller and Smith Carriage homes, are in violation of height and/or setback. Staff advised CTCAC that Staff would use that information as the assumption for total violations and would request of the Developer/Builders any proof to the contrary.

The CTCAC will work to outline and submit the appropriate mitigation package as requested by the Board and Staff. This will be done in as timely a manner as possible in view of the scope of violations and in consideration of how best to serve the community.

Meeting Attendees:**Charlie Loehr, Director of M-NCPPC****Michele Rosenfeld, Senior Counsel for M-NCPPC****Tariq El-Baba, Counsel for M-NCPPC****Michael Ma, Director of Development Review for M-NCPPC****Martin Klauber, Peoples Counsel****Amy Presley, CTCAC****Kim Shiley, CTCAC****Niren Nagda, CTCAC****Tim Dearros, CTCAC****Jessica Steinhilber, Fischer & Steinhilber, LLC, Counsel for CTCAC**

8337 Montgomery Run Road, #1
Ellicott City, MD 21043
410-746-3728

**Fischer &
Steinhilber, LLC**

Fax

| | | | |
|--|---|---------------|---------------------|
| To: | Chairman Derick Bertage | From: | Jessica Steinhilber |
| Fax: | 301-495-1320 | Pages: | 3 (with cover) |
| Phone: | | Date: | May 23, 2005 |
| Re: | CTCAC meeting with planning board staff cc: | | |
| <input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle | | | |

• **Comments:** The attached memo was also sent to you via email.

MEMORANDUM

RECEIVED
0752
MAY 18 2005OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

TO: Derick Berlage, Chairman, Montgomery County Planning Board

CC: Charlie Lochr, Michele Rosenfeld, Martin Klauber

FROM: Members of the Clarksburg Town Center Advisory Committee (CTCAC)

RE: May 13, 2005 Meeting Between CTCAC and Planning Board Staff

DATE: May 23, 2005

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The CTCAC will work to outline and submit the appropriate mitigation package as requested by the Board and Staff. This will be done in as timely a manner as possible in view of the scope of violations and in consideration of how best to serve the community.

Meeting Attendees:

Charlie Loehr, Director of M-NCPPC

Michele Rosenfeld, Senior Counsel for M-NCPPC

Tariq El-Baba, Counsel for M-NCPPC

Michael Ma, Director of Development Review for M-NCPPC

Martin Klauber, Peoples Counsel

Amy Presley, CTCAC

Kim Shiley, CTCAC

Niren Nagda, CTCAC

Tim Dearros, CTCAC

Jessica Steinhilber, Fischer & Steinhilber, LLC, Counsel for CTCAC

Krasnow, Rose

From: Krasnow, Rose
Sent: Friday, May 20, 2005 6:48 PM
To: 'synergiesinc@aol.com'
Subject: Requested documents

Amy,
Charlie brought me your request for documents, etc. around 2 o'clock this afternoon. We are working to put together the information you need, but we cannot possibly get it all together before Monday. Since I know time is of the essence, I just wanted to let you know.

Rose G. Krasnow
Development Review Chief
Maryland National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
(p) 301 495-4591
(f) 301 325-3462
rose.krasnow@mncppc-mc.org
www.mc-mncppc.org

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Friday, May 20, 2005 8:27 PM
To: Krasnow, Rose
Subject: Re: Requested documents

Hi, Rose.

Thanks for your update. I apologize for the late request, but we really only realized our need for those documents after meeting with John Carter on Wednesday evening. In meeting with John, we realized that we had to get a better understanding of what was already scheduled in terms of amenities, etc. He suggested that we work from those documents forward. In our meeting with Charlie yesterday, during our walk of the development, he requested that I send our request to him today in writing.

Just give me a call or drop me an email on Monday to let me know your timing. We'll get back to you if we think this will in any way affect our scheduled meeting date/time.

Thanks again,
Amy

8/13/2005

LAW OFFICES OF
KNOPF & BROWN
401 EAST JEFFERSON STREET
SUITE 206
ROCKVILLE, MARYLAND 20850
(301) 545-6100

DAVID W. BROWN

FAX: (301) 545-6103
E-MAIL BROWN@KNOPF-BROWN.COM
WRITER'S DIRECT DIAL
(301) 545-6105

June 13, 2005

Derick Berlage, Chairman
and Members of the Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RECEIVED
0855
JUN 14 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: **Clarksburg Town Center - Site Plan Review**
Nos. 8-98001 and 8-02014
Building Height Violation Reconsideration Hearing

Dear Chairman Berlage and Members of the Board:

Enclosed please find a June 1, 2005 letter from the undersigned, sent to Michele Rosenfeld, Esq. on behalf of our client, Clarksburg Town Center Advisory Committee.

Newland Communities, through their counsel, hand-delivered a letter to you and the other members of the Board on June 10, 2005, addressing issues raised in, and specifically responding to, my June 1st letter. I therefore thought it appropriate that the Board have a copy of my letter. The Committee anticipates filing a response the June 10th letter in the near future, addressed to the Board.

Sincerely yours,



David W. Brown

/enclosure

cc: Charles Lochr, Director (w/o encl.)
Rose Krasnow, Chief, Development Review (w/o encl.)
John A. Carter, Chief, Community-Based Planning (w/o encl.)
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June 1, 2005

VIA EMAIL AND REGULAR MAIL
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Michele Rosenfeld, Esq.
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The Maryland National Capital Park
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Office of General Counsel
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: **Clarksburg Town Center - Site Plan Review**
Nos. 8-98001 and 8-02014
Building Height Violation Reconsideration Hearing

Dear Michele:

As you are aware, this firm has been retained recently to assist the Clarksburg Town Center Advisory Committee ("Committee") in seeking answers and remedies for what the Committee regards as widespread, ongoing violations of the Clarksburg Town Center ("CTC") Site Plans. The principal purpose of this letter is to document for the record what the Committee has uncovered concerning these violations, in order to assist the staff in understanding and identifying all violations, and in providing a detailed explanation to the Board for how they came about. **Please make this letter part of the record in the above-referenced proceeding.** Other critical issues are also addressed: (1) the need for an immediate stop work order to minimize ongoing site plan violations and facilitate additional enforcement activity, including collecting from the developers information to inventory and then correct or remediate existing or ongoing site plan violations; and (2) the Committee's as yet unfilled request to the staff for information, as critically needed by the Committee as it is by you, to prepare a proposal to mitigate the effects of past site plan violations.

These three issues – violations, enforcement and mitigation – flow directly from the Committee's endless days and weeks of poring over such records as have been made available in pursuit of straight answers to two simple questions: (1) Why has there been such a mismatch between what was legally required and what has actually been done in the construction of the CTC? (2) What is the Board going to do to enforce compliance with the approved Site Plans? The Committee, a group of lay citizen residents of the CTC, through persistence and diligence that is unprecedented in my experience, has revealed staff malfeasance in particular instances and a pattern of staff inattention to

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obvious site plan compliance problems that have resulted in hundreds of illegally oversized homes. Some have been built and sold, and are now occupied by private citizens. Other homes are still under construction, with nothing being done to stop the work or to insist on corrective action. Nor has there been any effort to remediate the adverse effects of violations before, as a practical matter, it becomes too late to correct problems directly.

Whether the problems with the CTC Project will be comprehensively addressed remains to be seen. If past is prologue, the Committee is understandably concerned about the future. One foreseeable possibility is a staff recommendation on pending CTC Project Plan Amendments that they be approved, with the effect of retroactively validating all of the site plan violations and minimizing the impact of staff efforts in April that misled the Board into an initial ruling that there was no Site Plan enforcement problem. Such an approach would do irrevocable damage to the public trust and confidence in the Board and its staff. Prompt and active intervention at the highest levels of the professional staff is needed to avoid this. The Committee is prepared to work with you and the Director to ensure that the CTC Project gets back on track, and to mitigate whatever illegal construction the Board determines ought not now be undone.

I. THE STAFF REPORT SHOULD FULLY DISCLOSE CTC SITE PLAN VIOLATIONS TO DATE

The Planning Board must be fully and candidly apprised of all that has gone wrong to date in the execution of the CTC Site Plans. The Board and the public deserve no less. To ensure that happens, this letter sets forth the Committee's findings for the benefit of all parties to the forthcoming reconsideration hearing.

**A. The April 8, 2005 Staff Report And Its Defense At
The April 14th Hearing Appear To Be Fraudulent**

As I trust you will appreciate, I do not casually use the word "fraudulent." Nonetheless, as we understand the facts, it appears to be an accurate characterization. The author of the April 8, 2005 staff report, who initialed the report, defended it at the April 14th hearing, and is known to all parties, shall remain nameless in this letter, being referred to as PBS (for Planning Board Staff member). PBS' recommendation, subsequently adopted by the Board, was a "finding that building heights of subject structures comply with site plan approvals." This recommendation was based on a materially incomplete description of the underlying facts. Specifically, PBS omitted the fact that Site Plan 8-98001 was subject to explicit numerical height limits of 35' for single family homes and townhomes and 45' for multi-family homes. CTC Site Plan, Phase 1, Sheet B, No. 8-98001 (approved March 24, 1999 by signature of Joseph R. Davis). If this information had been disclosed, it would have been obvious - from the building height table on p. 7 of the PBS Memo - that all of the Phase I townhouses were

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illegally high (by 2'8", 5', 7'6", or 13'5" – 16'7") and that the four-story Bozzuto Condominiums were as well (by 5'10" or 8'8").

This omission cannot be overlooked just because what is otherwise contained in the memorandum is technically true: "fraud may consist in the suppression of the truth as well as in the assertion of a falsehood." Hoffman v. Stamper, 385 Md. 1, 867 A.2d 276, 292 n. 12 (2005). Of course, "non-disclosure does not constitute fraud unless there is a duty of disclosure." Frederick Road LP v. Brown & Sturm, 360 Md. 76, 756 A.2d 963, 976 n. 14 (2000). In the civil context, such non-disclosure would be actionable if there was an intention to deceive and action taken in justifiable reliance on the concealment. Hoffman, supra.

All the elements of fraud appear to be present in this case. When the Phase I Site Plan was before the Board in 1998, the assigned staff person—PBS—recommended a generalized "four story" building height. But the Site Plan before the Board, which the Board approved, did not use this measurement. Instead, the Site Plan, just as the approved Preliminary Plan had done before it, utilized explicit height limits of 35' and 45', as described above. These explicit limits only made sense, given the same explicit limits in the Data Table on the CTC Preliminary Plan, No. 1-95042 (Final Submission), and the Data Table on the approved CTC Project Plan (John Carter, signatory, April 26, 1996). Despite the fact that the issue of building height was brought to PBS's attention in advance, PBS omitted from the April 8th Memo the critical fact that explicit height limits existed on the Board-approved Phase I Site Plan, 8-98001. The PBS Memo instead emphasizes developer compliance not with the explicit height limits the **Board approved**, but rather the elastic height limit the **staff recommended**:

In the Site Plan staff report...the proposed
height limitation for residential buildings
was set at four stories....

PBS Memo at 8. This is followed by argument shrugging off any compliance problem, on account of asserted compliance with a four-story height limitation in the Project Plan. In this and other ways that need not be detailed for present purposes, the critical information about Site Plan height limits was omitted and obscured in the PBS Memo.

At the April 14th hearing, the Committee challenged the PBS Memo's reliance on the **Project Plan** by presenting the March 24, 1999 signature set of the Phase I **Site Plan** with the explicit numerical height limits quite evident. The Committee's position was that the specific criteria of the Site Plan were controlling over the more generalized Project Plan, particularly as to the condominiums whose height was then at issue. PBS presented to the Board supplemental materials, not referenced in the PBS Memo, in an effort to show that the condominiums were subject to a "4 story" height limit, including the Data Table for the Phase IB(Part 3) Site Plan, with the notation "4 stories" written over the underlying specific heights. In response to questioning by the

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Board about the discrepancy between the Phase I and Phase IB(Part 3) Site Plans on building height. PBS asserted that all Site Plans for townhomes and multi-family in Phase I were subject only to a "4 stories" height limit. Based upon these representations, the Board concluded that there was no Phase I building height violation.

After the hearing, the Committee went to DPS where they found and retrieved an unaltered copy of the Phase IB(Part 3) Site Plan, which had been signed by PBS, and which reflected exactly the same explicit numerical height limits as the 1999 Phase I signature set. In the copy submitted to the Board by PBS, the height limits had been manually written over, replaced by the words "4 stories." This clean set was submitted by the Committee to the Board as part of its request for reconsideration.

Subsequently, PBS admitted to superiors his/her alteration of the Phase IB(Part 3) Site Plan. As the Committee understands the facts now, the alterations apparently took place not as part of a process of amending site plans before construction, as PBS stated or implied at the hearing, but rather long after everything was built, i.e., at the time the Committee was beginning to make known to PBS its concerns about building height. The Committee received a voice mail message on May 10, 2005 from Mr. Loehr regarding what PBS did. In relevant part, his message has been transcribed as follows (with PBS's name and gender-specific pronouns deleted):

I did want to tell you something which I was not able to tell you before, but can now, which is that [PBS] did admit that [he/she] changed the drawing after you all brought the height issue to [his/her] attention. So, that's obviously part of what changes the whole picture. I mean not that your evidence wasn't pretty compelling as it was, but there's obviously no doubt now.

In short, PBS omitted material information from the April 8th Memo that would have discredited PBS's no-violation recommendation, falsely stated what residences were subject to explicit height limits and "backed up" the falsehood with documents PBS had altered. PBS's efforts to cover up the true facts make clear that the omission was knowing and intentional, not inadvertent. In terms of fraudulent intent, the situation is, at the least, comparable to a blind man on a street corner who, upon asking if any cars are coming, is told "No" by a police officer, and then proceeds to get run over by a truck that the officer saw was coming. Without in any way qualifying the foregoing, I must stress that it is not my intention to state or imply that the conduct of any staff person other than PBS was fraudulent. For all that appears, those who reviewed or approved the April 8th Memo were misled by it and PBS' false statements just as the Board was. In any event, the scope of improper staff conduct, and the responsibility for it at higher levels, are matters within the jurisdiction and control of the Board.

Mr. Loehr's voice mail message should be a wake-up call for the Board to take due regard of the seriousness of the matter, and the potential for a deleterious impact on public trust and confidence in the agency. The Committee urges you to join it in recommending that the Board promptly ensure that the matter is investigated by someone independent of the Board and its staff to understand the motivation for this cover up, to fix responsibility for this incident every place where it belongs,¹ and to ensure there is no repetition of it in future cases.

B. The Staff Should Assess and Disclose All CTC Site Plan Violations in Phase I

The Committee's concern about CTC Site Plan violations is not limited to building height, even though, as noted above, that problem is obvious and widespread among Phase I homes. The staff report should acknowledge and rectify the "errors" in the earlier report, but it should not stop there. Whatever motivation PBS may have had for "covering up" the building height violations, the Site Plan alterations substantially post-date all Phase I building construction. The question naturally arises: what other Site Plan limitations have the Phase I developers had the impunity to ignore?

The Committee is in no position to answer this question comprehensively, although some of the more obvious transgressions are quite apparent: numerous setback violations and phasing problems (construction beginning on subsequent phases of housing before required amenities for constructed phases are installed). The responsibility for a complete answer, and for proactive enforcement action, belongs to the Board and its staff, under §50-41 of the Subdivision Ordinance. Under that section, the staff has broad authority to control further progress on approved development, in pursuit of corrective action for site plan violations, including stopping work to obtain a comprehensive assessment of all violations to facilitate issuance of appropriate and efficacious corrective orders. §50-41(i).

The Committee believes the staff should exercise that authority now and order all CTC work stopped. There may be reluctance to stop the CTC project dead in its tracks over Site Plan violations, however widespread, without additional guidance from

¹ At the April 14th hearing, the developers had done nothing to correct PBS' representations. They had made no mention of the Phase I Site Plan height limits in their responsive letters. But the developers did not have the same duty to disclose the key material facts as did a public employee. Of course, if any of them or their representatives actively participated in misleading the Board, that is a different matter. This is just one part of the thorough investigation that the Committee believes is necessary. A good place to start is with the transcript of the April 14th hearing. It ought to be readily apparent on the tape of the hearing whether any developer or developer representative expressly concurred in erroneous statements about which residences were subject to the explicit Phase I Site Plan height limits.

the Board. Even so, however, this should not deter the staff from taking whatever enforcement steps are necessary to make a comprehensive and timely assessment of the present scope of the problem and report its findings to the Board. As explained in Part IV, the Committee needs this information as well. The staff should proceed to do this now, on this rehearing, so that further damage from Site Plan violations can be attenuated, if not eliminated.

**C. The Report Should Also Disclose the Problems Affecting
Phase II and Recommend Stopping Work and Development of
a Plan of Corrective Action**

The problems of Site Plan compliance with Phase II are, unlike those in Phase I, slightly more amenable to direct corrective action, because to some degree Phase II is ongoing or future construction. Thus, the staff report should assess Phase II problems immediately. Again, the Committee must stress that its concerns about CTC are not limited to a particular development standard or a particular Phase. The Committee is concerned about orderly, lawful development of the entirety of the CTC Project.

Among the findings the Committee believes are warranted and that the staff report should reflect regarding the Phase II Site Plan are the following:

1. The Preliminary Plan for CTC - #1-95042 (11/20/95 Final Submission) for all units with Phases I & II lists the same 35' and 45' residential height limits as the Phase I Site Plan.
2. The recorded subdivision plats for Phase II indicate that "development is subject to a site plan enforcement agreement pursuant to M-NCP&PC file number 8-98001", i.e., the Phase I Site Plan Enforcement Agreement. See Plats 22533-37 (Phase IIA); 22631-34 (Phase IIB); 22783-86 (Phase IIC); and 23046-48 (Phase IID). Yet all of these record plats were approved by the Board after the deadline (2/26/02) specified by the Board in the Phasing Plan incorporated by reference into the Agreement (Exhibit "E").
3. The Phase II Site Plan was initially reviewed in 2001 and approved by the Board in June 2002. This could not have happened without an actual site plan before the Board for approval. Such copies of the plan as the Committee has been able to find show principal building heights at exactly the same limits as were set forth in the Phase I Site Plan.

See PBS Staff Memo for Phase II Site Plan Review, Attachment G (May 2, 2002); Attachment to Development Review Committee Comments on Phase II (Nov. 19, 2001).

4. A 2002 signature set of drawings for the Phase II Site Plan i.e., 8-02014, has yet to be found. What has been produced is an October 14, 2004 set, which is suddenly devoid of any limitation on principal building height, in violation of § 59-D-3.23(a). Only a height limit for accessory structures is shown (27').
5. There is also no Phase II Site Plan Enforcement Agreement contemporaneous with the June 2002 Site Plan approval.
6. The actual Phase II Site Plan Enforcement Agreement is a brief, one-page document apparently drafted on April 24, 2003, but not signed until October 14, 2004.
7. Despite the October 14, 2004 dates on the available Phase II Site Plan and on the Enforcement Agreement, many Phase II homes were built and occupied before that date. According to SDAT records, completed homes were sold to private citizens on these prior dates: 4/4/03; 12/19/03; 6/14/04; 6/28/04; 7/14/04; 7/15/04; 8/12/04; 8/18/04; 9/1/04; and 9/14/04. Of course, this means construction may have been started on many other Phase II homes prior to the October 14, 2004 signature date as well.
8. In short, either a viable Phase II Site Plan was in effect during the 2003-2004 period that preceded the October 14, 2004 site plan, or extensive construction took place in violation of the development procedure for optional development in the RMX-2 zone. § 59-C-10.3.11(a).

The Committee is again in the position of the blind person in trying to figure out what the complete story is on the Phase II Site Plan. The Committee expects your next staff report to fill in the blanks and answer several obvious questions raised by the foregoing. These include: (1) Why are there no principal building heights on the October 14, 2004 Site Plan, and principal building heights on earlier iterations? (2) What happened to the signature set of the Phase II Site Plan approved in June 2002? (3) Has there been another alteration to official documents in an attempt to retroactively validate excessive building heights? (4) Given the explicit height limits for residential buildings

in the Preliminary Plan, why were these not carried forward into the October 14, 2004 version of the Phase II Site Plan?

If and when you have answers to these questions, I believe it will be apparent that immediate corrective action is required to ensure that future Phase II construction is within the height limits that were obviously intended to be the same for both Phase I and Phase II, i.e., 35' for single family homes and townhomes, and 45' for multi-family. **Unless the staff has already taken prompt action, the Committee expects your report to recommend that ongoing work be stopped and not resumed until a comprehensive corrective action/mitigation plan is devised, in consultation with the Committee, and is being implemented.**

II. THE REPORT SHOULD ADDRESS THE BROADER ENFORCEMENT IMPLICATIONS RAISED BY THE FAILURES APPARENT IN THIS CASE

Your report to the Board should make unmistakably clear that since the improper attempt to alter Site Plans did not take place until **after** the homes subject to the Plans were built, the developers built in open violation of readily apparent explicit height limits. The Board must be brought to realize that the situation brings into sharp focus broader questions about the efficacy of site plan enforcement. How did it come about that developers, with no apparent regard for risk of corrective action, felt free to build in violation of explicit development constraints? In the Committee's view, your report to the Board would be seriously incomplete if it does not address whether developers have reason to expect their transgressions to be unnoticed, excused, covered up or otherwise disregarded by the staff.

The obvious starting place for this assessment is a thorough investigation of the communications between staff and developers in this case after site plan approval, with particular attention to anything said about building height. In light of the admitted alteration of official documents and the false statements to the Board regarding them, consideration should be given to seeking this information under oath, both from staff and developers and their agents in contact with staff. Apart from what went wrong in this particular case, however, the Board needs to understand what it is about the enforcement process that might have led the developers to believe that they could violate explicit development standards without fear of consequence.

The record in this proceeding to date is far from clear on why the developers acted as they did. In its March 10, 2005 letter, Craftstar Homes has ducked the question by ignoring the explicit height limits in the Site Plan. Did Craftstar know that PBS was in the process of trying to eliminate all traces of those limits? If not, why did Craftstar believe that it would be a sufficient response if it tried to explain its actions without reference to those limits? For their part both Bozzuto Homes (March 8, 2005 letter) and Newland (March 4, 2005 letter) reflect awareness of the Site Plan limits

(though, to be sure, they are not mentioned directly) by arguing that the Board gave the staff authority to approve building modifications that were not "fundamental." Did Bozutto Homes and Newland undertake the risk of constructing acres of homes in violation of explicit, fixed building height limits without advance assurance that exceeding the height limits would be excused by the staff as "non-fundamental modifications"? After all, such risk could be avoided entirely by (a) simply complying with the prescribed height limits or (b) getting Board approval, prior to construction, of a building height amendment. If this did not happen, what does the record show regarding requests for building height changes as "non-fundamental modifications"? Were staff approvals sought and obtained? Before or after construction? Where is the documentation of all of this? Is this considered a legitimate way to end run Board-prescribed Site Plan limits? Is what happened in this case representative of what generally happens in site plan enforcement?

In the end, all the Committee can do is raise questions; it cannot answer them. Site plan enforcement is exclusively a responsibility of the Board, §50-41(k). But the Committee can and does demand that those with this authority exercise it with due regard for the public interest and particularly the fact that the public has no other recourse but to rely on its public servants to protect them from the consequences of illegal development.

III. THE BOARD MUST BE MADE AWARE THAT THE CTC SITE PLAN ENFORCEMENT ISSUES GO WELL BEYOND BUILDING HEIGHT VIOLATIONS, TO THE POINT THAT SITE PLAN REVOCATION MUST BE CONSIDERED AMONG THE REMEDIES

Although this proceeding began with the Committee's concern over building height violations, your report should make clear that there are many more enforcement issues to be addressed than just building height within CTC. Whether separated from the instant reconsideration matter or not, these issues need to be promptly and thoroughly addressed. In the end, the message to the developers should be clear: provide expeditious cooperation in acknowledging, correcting, remediating and mitigating all Site Plan violations, or face Site Plan revocation.

A. Minor Plan Amendments

I am advised by the Committee that the staff has approved numerous Site Plan amendments as minor amendments under § 59-D-3.7 & § 59-D-2.6(a), thereby obviating public participation in the amendment process, in contrast to what is required for major plan amendments under § 59-D-3.4 & § 59-D-3.7. This is proper only if the amendment "does not alter the intent, objectives or requirements expressed or imposed by the Planning Board in its review of the plan." § 59-D-2.6(a)(1).

The Committee is deeply concerned that the community is being deprived of the opportunity for input on significant plan changes by an overly generous application of the minor amendment process. The Committee feels there have been significant changes in massing and location of buildings, elimination of vistas deemed important to the overall plan for Clarksburg development, and elimination of an entire road, all without an opportunity for public input. In addition documentation of developer requests for, and staff analysis and approval of, so-called minor amendments is missing in many instances.

B. Setbacks

It is the Committee's understanding that setback violations on existing CTC construction are numerous. As part of its authority to investigate and correct Site Plan violations, the staff should insist that all developers provide certified surveys or plats for each home or block of homes showing required vs. actual setbacks.

C. Amenity Phasing

As noted previously, the approved Project Plan requires that amenities for one CTC Phase be completed before construction of a subsequent Phase has commenced. The Committee reports that this requirement has not been honored to date.

D. Extension of Preliminary Plan

The CTC community received a letter dated April 1, 2005 on behalf of Newland Communities stating that the developer would be seeking an extension for Preliminary Plan #1-95042. The Committee subsequently determined that the Preliminary Plan had expired March 26, 2005. The Committee was told by staff that when the extension request was scheduled to come before the Board, the Committee would be advised of the date of the hearing. The Committee wants to be certain that the staff includes in its report the implications of the need for the extension, with particular emphasis on what opportunities the Preliminary Plan expiration provides the Board to maximize the remediation and mitigation of Site Plan violations.²

E. Project Plan Amendments

² To this end, the report should detail what the developer must demonstrate in order to qualify for an extension, in light of (1) any limit to the APFO validity period under §50-20(c)(3); (2) any currently non-validated portions of the Preliminary Plan under §50-35(h)(2)b; (3) an assessment of whether an extension (as opposed to Preliminary Plan amendment) is improper in light of the approved phasing schedule, under §50-35(n)(3)d.ii.; and (4) any other procedural or substantive problems with the extension request.

The CTC Project developers have filed comprehensive Project Plan Amendments. They are evidently being treated as major amendments under § 59-D-2.6, in that a public hearing has already been scheduled for July 21, 2005. Over the Memorial Day weekend, each and every CTC homeowner received, via certified mail, a package dated May 27, 2005 from developer counsel, giving "notice of Application for Project Plan Amendment No. 9-94004A". The Committee has done a preliminary examination of the requests, and their reaction borders on the unprintable. In significant part, what is being proposed for amendment are the standards to be applied to what is already built. In particular, one of the specific amendments (vi) is to "provide a clear set of development standards applicable to the project." But the development standards are "clear" and require no amendment. Upon closer examination, the drawings reveal that the height and setback restrictions on already constructed residences are proposed to be "amended," such that, if approved, the "amendment" will retroactively validate existing height and setback violations once corresponding Site Plan "amendments" are filed. It appears that the amendment process is being used by the developers to "cure" Site Plan violations. This attempt to paper over existing violations is an obvious abuse of the amendment process.

The Committee, applying common sense, understands that developers are unlikely to invest the time and energy into submitting detailed amendments in the absence of some sense beforehand that they will be approved. That developers even imagined that this method of validating Site Plan violations would work constitutes the final straw in the Committee's loss of confidence that, absent forceful intervention, the CTC will look anything like what was promised by the developers and required by the Board. The picture is not pretty: widespread violations, ignored by site plan enforcement staff, uncovered only after heroic efforts by citizens to understand what went wrong - efforts nearly successfully derailed by fraudulent efforts to keep the problems shielded from public view - followed by efforts to gloss over the problems. It is no wonder that, in Clarksburg, public confidence in the Board and its staff is riddled with anxiety and doubt, and the belief that developers are free to do what they want because any excesses can and will be papered over after-the-fact, if they are discovered at all. The Committee urges you to recommend that the Board, if it does not reject the Amendments forthwith in light of other problems, defer any hearing or action on them until there has been full and complete disclosure of existing problems and appropriate penalties and corrective measures imposed.

F. Revocation of Site Plan Approval

Rather than hold an amendment hearing sought in whole or in part to exonerate developers who have flouted the restrictions in the Site Plans, the Board should be headed in the opposite direction. On its own motion, the Board should schedule a hearing pursuant to § 59-D-3.6, informing the developers that the Board has

preliminarily determined that grounds for revocation exist as to both Site Plans, i.e., 8-98001 and 8-02014.³

In the meantime, to preserve the status quo and not extend ongoing or imminent Site Plan violations to current and future construction, all work should be stopped. The exact time for this process is obviously a matter of discretion and judgment within the expertise of the Board, but the Board has ample authority to take this action under § 50-41 of the Subdivision Ordinance, including doing so before the Site Plan revocation hearing.

Threat of revocation may be precisely the stimulus needed to ensure full and prompt developer cooperation in correcting and remediating all Site Plan violations. If such cooperation is not forthcoming, the Board may well be justified in the extreme remedy of revoking Site Plans.

IV. THE COMMITTEE CANNOT PARTICIPATE MEANINGFULLY IN DEVELOPING A MITIGATION PACKAGE ON INCOMPLETE INFORMATION

You have suggested that one way to ameliorate the Committee's concern about how development has been taking place in the CTC is for the Committee to develop a mitigation package, i.e., a list of amenities that the Committee would like to see added by the developers to offset any Site Plan violations that, as a practical matter, cannot be corrected because the buildings have been built, sold and occupied. These are, presumably, benefits that the developers might agree to provide in lieu of severe financial penalties (up to \$500 per day per violation under § 50-41 (c)(2)) that could be imposed by the Board. The Committee is not at all sure that the Board lacks the authority to demand appropriate mitigation as part of its comprehensive corrective action authority under § 50-41 (i) and § 59-D-3.6. Nevertheless, the Committee is amenable to further exploration of this solution. It should be clear from the foregoing, however, that such a resolution will not restore needed public trust and confidence in the absence of a Board finding that Site Plan violations have taken place and have not been properly corrected. In other words, the resolution should not resemble a typical civil suit settlement where each party may thereafter continue to deny the truth of claims made by the other party.

³ The PBS memorandum of April 8, 2005 (at 3-4) asserts that §59-D-3.6 establishes a multi-step compliance process that includes **two** Board hearings: a "Threshold Hearing" to determine if a site plan violation exists, and a "Compliance Hearing" to determine the appropriate remedy. The Committee disagrees. There is no two-hearing requirement in §59-D-3.6. That section mandates only **one** hearing, at which the developer has the opportunity to either demonstrate that the Board's determination of a violation is in error or to address the issue of appropriate remedy, or both. The Board could establish a two-hearing process in its Rules of Procedure, but it has not done so.

Accordingly, the Committee believes you should not delay in the scheduling of the hearing on reconsideration of violation of Site Plan 8-98001 and 8-02014, if not a broader Site Plan revocation hearing, except to complete a comprehensive staff report along the lines indicated above. In the meantime, the Committee is already developing the requested mitigation package. To complete the job effectively, however, the Committee needs to be more fully informed than at present on critically material facts, as previously disclosed in an email to Director Loehr. The Committee does not want to be placed in the position of asking for something that is already required, or inconsistent with what is required. To reiterate, the documentation and information that should be provided to the Committee includes the following:

- Recreation and Amenity Plans

- Approved Site Plan signature set showing amenities for each development phase.
- Planned timeline and current status of each scheduled amenity.
- Specific detail regarding Piedmont Woods, Murphy's Grove and Hilltop Plaza park areas, as well as the Town Square Green and Greenway, with information on walking paths, bike paths and other amenity features.
- Information regarding any amendments, either Staff level or other, that have permitted removal or repositioning of any amenity features. Also include proposed Phase 3 and Phase 1A amendment.

- Landscape Plans

- Approved Landscape Plan signature set showing landscaping detail, including tree, shrub and planting varieties for each development phase.
- Planned timeline and current status of landscaping for each phase.
- Specific detail regarding Piedmont Woods, Murphy's Grove, Hilltop Plaza, Town Square Green and Greenway, and all entryways. Also include proposed Phase 3 and Phase 1A amendment.

- Framework Streetscape Plans

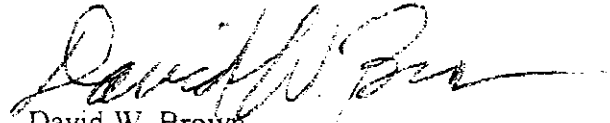
- Approved signature set showing main entryways and framework streetscapes with detail of fixtures, such as entryway signage, lighting, brickwork, benches and awnings. Also include proposed Phase 3 and Phase 1A amendment.
- Planned timeline and current status of each entryway and streetscape.

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- Proposed Phase 3 and Phase 1A Amendment
 - Proposed elevations for all structures, with certified height calculations in feet/inches.
- MPDU Plans
 - Approved plans detailing total number and location of MPDU's.
 - Specific detail regarding planned location for MPDU's not yet constructed.
- Height and Setback Violations
 - Staff assessment of the number and location of setback violations. by builder.
 - Staff assessment of the number and location of height violations. by builder.

Your prompt attention to these matters is greatly appreciated. I look forward to hearing from you about an early date for the reconsideration hearing.

Sincerely yours.



David W. Brown

cc: [Via Email & Regular Mail]
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DAVID W. BROWN

June 20, 2005

VIA EMAIL AND REGULAR MAIL
[michele.rosenfeld@mncppc-mc.org]

Michele Rosenfeld, Esq.
Associate General Counsel
The Maryland National Capital Park
and Planning Commission
Office of General Counsel
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Clarksburg Town Center - Site Plan Review
Nos. 8-98001 and 8-02014
Building Height Violation Reconsideration Hearing

Dear Michele:

I write on behalf of the Clarksburg Town Center Advisory Committee ("Committee") to express the Committee's continuing concern about its unfilled requests for documentation that should be in the Planning Board files for the CTC Project.

1. Some of the information requested in Part IV of my June 1st letter – information needed by the Committee to develop a mitigation package – was furnished by you on June 10th. Much of what was requested, however, has yet to be provided, even though my June 1st letter requests were essentially a repetition of earlier requests. To itemize, the Committee still does not have:

- a. Recreation and Amenity Plans, with phasing plans and current status
- b. Landscaping plans for Phase 3 and the Phase 1A amendment
- c. Timeline and current status on all landscaping plans
- d. Framework Streetscape Plans, with phasing plans and current status
- e. Complete and accurate MPDU Plans for all phases, both constructed and planned
- f. Staff assessment of height and setback violations

Michele Rosenfeld, Esq.

June 20, 2005

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Until the Committee gets these materials, its efforts to develop a meaningful mitigation package will continue to be frustrated.

2. Last week I asked you for copies of the Appendices to the Phase I Site Plan Enforcement Agreement. These Appendices are essential to development of our response to the Newland Communities Letter of June 10, 2005. We intend to file that response as soon as possible, so that the staff will have the benefit of the Committee's position on the claims made by Newland before the staff report is finalized and released on Friday, June 24th. If the Appendices are anywhere to be found in the Board files, I ask that you send a copy to me by courier immediately. If that is done right away the Committee's response should be in your hands sometime tomorrow.

Thank you for your prompt attention to these outstanding matters.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Dave", written in black ink.

David W. Brown

DAVID W. BROWN

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June 21, 2005

Derick Berlage, Chairman
and Members of the Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

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OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: **Clarksburg Town Center - Site Plan Review**
Nos. 8-98001 and 8-02014
Building Height Violation Reconsideration Hearing

Dear Chairman Berlage and Members of the Board:

This letter supplements my June 13, 2005 letter to you in the above-referenced matter, enclosing a discussion of the concerns of my client, the Clarksburg Town Center Advisory Committee ("Committee"), as set forth in my June 1, 2005 letter to Associate General Counsel Michele Rosenfeld.

**I. THE INFORMATION DISCLOSED SINCE THE BOARD'S
NO-VIOLATION DECISION ON APRIL 14, 2005 MAKES
CLEAR THAT THAT DECISION SHOULD BE REVERSED
AT THE REHEARING**

Since my June 1st letter, I have had an opportunity to listen to the tape of the Board's April 14th hearing. That experience changes none of the analysis and conclusions reached in that letter. Rather, it confirms the materiality of PBS's misrepresentations to the no-violation outcome of that hearing. It was quite late in the hearing before PBS [the author of the April 8, 2005 Staff Report] stated, in response to a question from Vice Chair Perdue, that the final approved Phase I Site Plan had been amended such that sub-phases of Phase I were built on site plans that replaced specific numerical building heights with a "4 stories" limitation. Shortly thereafter, Ms. Krasnow added that

we have been unable to ascertain why it went from 45' to 4 stories, but clearly it did, and the buildings were built in accordance with the 4 story regulation. It is silent in the record as far as we can [tell].

Following this comment, Vice Chair Perdue made a motion to find no violation. She stated her rationale for the motion in the following words:

It is a very messy record but I think that as to the place where it gets the clearest is with the signature set that has height limits in it, but none of the buildings in question were built pursuant to that signature set. They were built pursuant to a signature set that explicitly deleted the height limits. They are written out; they are over written. It says 4 stories and the height limit is crossed out and that's the conditions pursuant to which these buildings were built. Therefore I would not find a violation.

Commissioner Bryant seconded the motion, explaining that the record is messy but that the mess was the Board's responsibility, not the developers, and it would be a gross injustice to penalize them for following Board rules and guidelines. Commissioner Wellington declined to support the motion, stating that the record was not clear that the signature set final Phase I Site Plan had changed. Commissioner Robinson supported the motion, observing that an unclear record does not constitute a violation, and that the record was not clear that there was a violation. Finally, Board Chairman Berlage supported the motion, observing that the Committee had not met its burden of proof that a violation occurred.

It is quite clear from the foregoing that the Board's no-violation determination hinged entirely on the belief that the building height limits were changed on approved site plans before buildings were built. Why and how this change happened was not as important as the fact that it took place **before**, not **after**, buildings were built, as explicitly represented to the Board by PBS. This representation was false, as PBS has apparently acknowledged since the hearing. Thus, unless the Board were to change its rationale at the reconsideration hearing, the facts now known, i.e., that the buildings were built while the explicit numerical height limits on the Phase I Site Plan signature set were still unchanged, compel the conclusion that the buildings identified in the April 8th Staff Report as in excess of 35' or 45' in height, as the case may be, are in violation of the Phase I Site Plan.

II. NEWLAND COMMUNITIES' JUNE 10, 2005 LETTER CONTAINS NOTHING THAT SHOULD DISSUADE THE BOARD FROM FINDING THAT THE PHASE I AND II SITE PLANS HAVE BEEN VIOLATED

Most of the rest of this letter is devoted to a response to the letter of June 10, 2005, from counsel for the Newland Communities ("Newland Letter"). The Newland Letter is, in every passage, a convoluted and evasive response to my June 1st Letter, one that fails to deal with the known facts of record.

a. **Building Height Claims**

The Newland Letter argues Newland's compliance with the building height limitations at length. *Id.* at 1-5. Yet at no point does Newland deal with the basic simplicity of what, as explained above, the Board properly understood was at issue: what were the signature set building height requirements when the buildings went up? The answer to that question is now unambiguous: 35' for townhouses and 45' for multi-family units. Newland ignores this in favor of a variety of arguments that lead nowhere.

1. Newland begins its defense with the claim that because the RMX-2 (Optional Method) zone does not specify a maximum building height, the "proposed and constructed building heights do not violate any zoning standard." Newland Letter 1. This is wrong. Construction that violates the Site Plan violates the Zoning Ordinance. Section 59-D-3.4(c) requires the developer, if it executes the development authorized by the Site Plan, to agree to comply with all requirements that are part of the Site Plan." This is just as much a "zoning standard" as an explicit building height.

2. Newland argues that "4 stories" in the Project Plan Opinion is controlling. Newland Letter 1. But as Commissioner Robinson made clear at the April 14th hearing, what is controlling is the signature set Site Plan, which is supposed to fully and carefully incorporate all limitations and conditions to construction. This is especially so for building height of principal buildings, without which a site plan is incomplete as a matter of law under the Zoning Ordinance. §59-D-3.23(a).

3. Newland argues that the Site Plan Opinion incorporates the "Staff Report and Recommendation that identified '4 stories' as the 'permitted/required' and 'proposed' building height for the Site Plan." Newland Letter 1. But because the Opinion does not expressly adopt a 4-story standard, all Newland is saying is that the Board impliedly (and vaguely) adopted it. During the violation hearing, however, the Board correctly did not view the Opinion as the controlling document. Otherwise, the definitive response to the Committee at the April 14th hearing by the Board should have been that building height numbers on the Phase I Site Plan were not controlling, as they were inconsistent with the Opinion.

4. Newland argues that the Site Plan Opinion does not indicate that a subsequent Site Plan "could in any way override the Board's written opinion of permitted building heights within the project (i.e., 4 stories)." Newland Letter 1-2. But it was hardly necessary for the Opinion to parrot the established existing practice, in which the Board relies on the signature set Site Plan as the definitive gauge of Site Plan compliance and the document against which building permits are drawn.

5. Newland argues that the inclusion of the data table (including explicit numerical building height limits) in the Site Plan was merely "a chart

inadvertently repeated in subsequent drawings.” *Id.* at 2. Newland presents no factual basis warranting the conclusion that this was just a simple mistake. To the contrary, after the hearing the Committee unearthed from DPS files the Site Plan for the Phase I subphase for the Bozzuto units, signed by Clark Wagner for Bozzuto, with the same height table as in the Phase I Site Plan itself, i.e., signed before construction and before post-construction alteration of the documents by PBS. Mr. Wagner was not inadvertently repeating an error; he was repeating what the Phase I Site Plan repeated from the **final approved Preliminary Plan**. To repeat the requirements of the Preliminary Plan is hardly “inadvertent;” it is what is to be expected. Moreover, if Newland or its predecessor (both represented by the same counsel) thought that the “4 stories” in the staff recommendation should override the data table in the Preliminary Plan, it had a straightforward remedy for eliminating any doubt or confusion: ask the Board for clarification. The reality is that there was no mistake or confusion. The Phase I Site Plan was prepared for Newland by persons who understood the obvious – absent Board approval, there should be no inconsistency between the development standards on the Preliminary Plan and on the Site Plan.

6. Newland argues that under Site Plan Condition 38, building height could be changed by staff. *Id.* at 2-3. This is the biggest red herring of all. Where is the evidence of a conscious staff decision to **change** building height? There is no documentation in the record of such changes, and at the April 14th hearing PBS made clear no request for change was made or granted. Moreover, the argument is inconsistent with Newland’s principal claim advanced in the letter, i.e., that the height limit is and always has been “4 stories,” which would of course mean there was no need for a change. Finally, even if there were evidence of an attempt to change building height utilizing Condition 38, the notion that building height is a change with the purview of Condition 38 is obviously wrong. If staff alone can alter prescribed development standards, what is the point of the Site Plan approval process? Condition 38 is plainly limited to relatively minor adjustments to non-fundamental project elements, such as marginal changes in building type and location, and minor adjustments to the project as it is being built to enhance open space, pedestrian and vehicular circulation and the like, while preserving overall project compatibility. The notion that Condition 38 – which I re-emphasize was never consciously utilized in this case – could justify the building of hundreds of homes oversized in height anywhere from 2’8” to 16’7” (June 1st Letter 2-3) borders on the preposterous.

7. Newland next references the hearing on the Phase II Site Plan on May 9, 2002, where staff – PBS – advised that Condition 38 had been used to administratively modify dwelling units and site layout in Phase I. Newland Letter 4. While Newland argues that this report was received by the Board “without object or controversy,” *id.*, conspicuous by its omission is any reference to administrative modifications in building height. Again, PBS advised the Board on April 14th that there had been no height modifications. The proper inference from the Phase II Site Plan

hearing, therefore, is that it was understood all around that building height was not something the staff could administratively modify.

8. Rehashing and repackaging a variety of the above claims, Newland next argues that the Board never reviewed the signature set Site Plan prior to its approval, and the Site Plan's adoption of explicit building heights was invalid. *Id.* This argument requires the Board to suspend disbelief long enough to accept the notion that Newland, with the advice of highly skilled and able counsel, submitted invalid Site Plans for approval, Site Plans that contained considerably more restrictive development standards than the Board ostensibly approved. If Newland truly believed this **then**, rather than having **now** concocted this claim to excuse the violations, it is incomprehensible that it would have acquiesced in submitting unduly restrictive building height limits on the Site Plan documents. The far more plausible explanation is that Newland believed **then** that it could build in excess of the Preliminary Plan and Site Plan height limits, and, with a cooperative staff, **now** paper over the discrepancies, with Project Plan and Site Plan Amendments. Indeed, that process is now underway. See June 1st Letter 10-11.

9. Newland claims staff could remove a building height limit under Condition 38 because the Board never imposed a specific height limit in its Site Plan Opinion. Newland Letter 5. This argument assumes, incorrectly, that the Board's Opinion must specifically adopt building height standards. There is no such requirement in the Zoning Ordinance. What the Board's Opinion must contain is findings about the Site Plan. §59-D-3.4. There is no requirement, nor should there be, that the Board Opinion regurgitate every numerical requirement contained on the Site Plan. That is not to say that the Opinion need not address building height – perhaps in great detail – if that had been a contested issue when the Site Plan came before it. In the case of Phase I, however, it could hardly be a surprise that there was little or no concern about the quite conventional 35' and 45' height standards on the Phase I Site Plan.

10. Newland argues that because the Phase I Site Plans were altered after construction, the alterations did not affect permit issuance by DPS, and the years of permitting that took place before that confirms "that '4 stories' was the approved building height standard." Newland Letter 5-7. PBS's fraudulent alteration of Site Plans is dismissed as irrelevant "untidy recordkeeping" and "perhaps questionable judgment in terms of timing." *Id.* at 7. Turning first to the significance of the permitting that has taken place, Robert Hubbard, Director of DPS, has advised that DPS does not check permit applications against the Site Plan for height restrictions; most permit releases come through Wayne Cornelius of the Board staff. Contrary to Newland's claim, *id.*, DPS relies upon Board staff for approval of each Site Plan (compliance with Site Plan signature set and Board-approved standards) prior to issuing permits. Nor does DPS inspect each unit for height and other zoning compliance issues before issuing a use and occupancy certificate. Under RMX-2 Optional Method zoning and the Board's structuring of the CTC Project under that zone, any violation of height limits would have to be addressed by Board staff in the course of inspection and enforcement. Within the

CTC, therefore, DPS exercises no authority to enforce height limits. Hence, the Board should attach no significance to Newland's claim of years of DPS permitting of units that violate Site Plan height limits.

What is particularly troublesome about Newland's argument is that it effectively assumes that the Board is unaware that no one at DPS is minding the store when the issue is building height. In other words, Newland makes an argument that could be persuasive only if the Board is ignorant of its own staff's enforcement obligations. The Committee is not going to indulge any such assumption, but that is not to say that the Board has done all it can to ensure that the staff is meeting those obligations. The CTC track record thus far is dismal, and the worst thing the Board could do is acquiesce in the building height violations simply because of their breadth and persistence, which is the argument Newland is making here. Put another way, Newland is saying in essence, "we have been so successful for so long in building in violation of the established standards that the established standards must be re-defined to conform to what we did." That is precisely what was being done, under wraps, before and at the April 14th hearing when (1) PBS used altered Site Plans to defend the status quo; (2) PBS lied to the Vice Chair regarding when the Site Plan alterations took place; and (3) Newland, having already submitted to PBS amendments to paper over the violations, stood mute when the opportunity to correct the record presented itself. In the end, Newland claims that it would be "manifestly unjust" to find a height violation where what it built was approved by staff. *Id.* But he who seeks equity must come before the Board with clean hands. Newland has now had three clear opportunities to display the kind of candor that might inspire the Board to be lenient in its findings: at the April 14th hearing, and in its prehearing letters of March 4, 2005 and June 10, 2005. Newland has struck out.

b. Setback Claims

Newland's approach to the issue of setback violations in the CTC mirrors its approach to building height: obfuscate sufficiently to warrant a Board finding that there was confusion about the requirement as the units were being built, and that it would therefore "be unjust to find a violation...." Newland Letter 10. In fact, when Newland's smokescreen is cleared away, there can be no doubt that a clearly established front yard setback of 10' has been repeatedly violated.

When the Project Plan was approved in June 1995, the following setbacks were in the Board-approved data table:

| | Required | Proposed |
|----------------------|----------|-------------|
| Setbacks: | | |
| . . . | | |
| b. From any street* | | |
| - Commercial Bldgs. | NA | 0 ft. min. |
| - Residential Bldgs. | NA | 10 ft. min. |
| . . . | | |

Notes: * No minimum setback is required if in accordance with an approved master plan

Board Opinion, CTC Project Plan 9 (June 12, 1995). What this means is and was easily understood by those who subsequently prepared the Phase I Site Plan, which is subject to RMX-2 Zone Optional Method development regulations, §59-C-10-3, including minimum building setback requirements in §59-C-10.3.8. Under §59-C-10.3.8(c), the minimum residential building setback from the street (otherwise defined in the Ordinance as the front yard, §59-A-2.1) is 30 feet, except that the Board can reduce this number, if consistent with the applicable master plan, all the way to zero if appropriate. In this case, the Board determined that the 1994 Clarksburg Master Plan provided it the full flexibility to reduce both the residential and the commercial building front yard setbacks to zero, which is why the data table states "NA" under "Required." The data table also reflects what the Board approved, i.e., what became the front yard setback requirements for the Project overall: zero feet for commercial buildings and 10' for residential buildings.

Newland, ignoring or mischaracterizing the foregoing, claims that during Phase I Site Plan approval (and again during Phase II), the Board "determined conclusively that **no** setback was required from the street." Newland Letter 8, 9. Newland relies on the Phase I and II Staff Reports, identical to each other in this respect, but has misconstrued them. These Staff Reports observe that the Board had determined during Project Plan Review that on account of the Master Plan, no setback is "**necessary**." Phase I Staff Report at 32; Phase II Staff Report at 18. This, of course, is not the same as concluding that no setback would be **required**. In fact, no commercial building setback was **required**, and a 10' residential setback was **required** at the Project Plan stage, as detailed above. Indeed, both of these decisions are reflected in the Staff Report Data Tables: Phase I at 32; Phase II at 17, mirroring the 0' (commercial) and 10' (residential) setbacks in the Project Plan Opinion. Newland's claim that the Board, in approving Phases I and II, reduced the Project Plan front yard requirement for residences

from 10' to 0' is baseless, and would make sense only if the cited tables had the same zero-foot setback for both types of buildings.

The 10' residential front yard setback imposed by the Board is reflected in the Data Table in the Phase I Site Plan, which lists 10' as the front yard and street setback minimum under §59-C-10.3.8 for all the residential units. As for Phase II, for the reasons detailed in my June 1st Letter 6-9, the absence of the 10' setback on the post-construction "Site Plan" of October 14, 2004, is meaningless. What counts is the Phase II Site Plan before the Board at the Phase II Site Plan hearing of May 9, 2002. Presumably Newland has a copy of this plan; the Committee is still searching for a legible one. If it were favorable to the claim Newland is now making, it would have surely been attached to the Newland Letter, which attached other site plans. Newland relies on these highly questionable Site Plan amendments, approved by staff, to create the impression that the 10' setback requirement was never actually imposed. The reality is otherwise; the requirement was there all along and, like the 35' and 45' building height requirements, is one Newland is trying to eradicate after-the-fact with Project Plan Amendments.

That Newland is grasping at straws is also quite obvious in its effort to conjure up "an irreconcilable conflict between a 10' street setback and a 0' side yard requirement for a unit built on a corner lot where the side yard also happens to abut a street." Newland Letter 9. There is no conflict, "irreconcilable" or otherwise. As every developer with experience in the County is well aware, the official County interpretation of the Zoning Ordinance is that "on a corner lot where the side yard also happens to abut a street," that "side" yard is treated as a second front yard. See DPS Code Interpretation/Policy ZP0403-3 ("Each corner lot has two front yards and therefore requires a front yard setback from each street."). Indeed, the only confusion in the developer community about the need for corner lots to meet the front yard setback on both streets is the confusion Newland is attempting to sow with a baseless argument. Indeed, for Newland to venture forth with such an obviously erroneous claim only strengthens the inference that the construction that has taken place in violation of the 10' front yard requirement has, all along, been intentional, not inadvertent.

c. **Committee Standing**

Newland's last refuge is to attack the messenger, i.e., the Committee. Newland Letter 8-9. This is a new tactic, not one repeated from the April 14th hearing where things went Newland's way. It is also a further indication that all Newland has left to grasp at are straws. The attack on the Committee must be contrasted with Newland's posture as recently as May 9, 2005, when, in a cover letter to Rose Krasnow on its 9-94004A Project Plan Amendment submission, Newland expressly acknowledged the Committee as the credible representative for a substantial group of CTC homeowners. Newland Letter 1-2 (May 9, 2005). This belated effort to discredit the Committee does not wash. The depth, quantity and transparency of the Committee's work, and the Committee's level of even-handed commitment to all CTC residents, are manifest from

the enclosed history of Committee actions on behalf of CTC.¹ Newland's unwarranted attack on the Committee should be rejected out of hand.

III. THE STAFF REPORT SHOULD NOT OVERLY COMPARTMENTALIZE THE MATTERS THE BOARD NEEDS TO ADDRESS

Ms. Rosenfeld responded to my June 1st letter on June 10th. In her response she expresses the view that "other regulatory matters" that were raised in my letter are "independent regulatory review items" about which the Committee can express its views "when they come before the Board for consideration." The Committee, however, believes that the Board can most effectively serve the public interest by not adopting this overly technical, compartmentalized approach to the July 7th hearing.

Construed most narrowly, the hearing is only about reconsideration of a finding of no building height violations on just two Bozzuto Homes buildings and three Craftstar "2 over 2" buildings, and nothing else. But as my June 1st Letter makes clear, as amplified by this letter, that is merely the tip of the iceberg of CTC problems this Board must address. The Committee believes there are many more building height violations. Numerous setbacks on constructed (or under construction) homes are also in doubt, as well illustrated by various letters to the Board from counsel for Craftstar. Moreover, the Committee intends to demonstrate that all the violations have a common origin: builder deviations from clearly prescribed standards, whether intentional or not, that were facilitated by some combination of staff inattention, oversight, negligence and misfeasance, that may or may not rise to the level of malfeasance, depending upon what evidence produced at or before the hearing.

As briefly outlined in my June 1st Letter, the Committee's concerns transcend building height and setback violations. The Committee is preparing a detailed listing of issues and discrepancies culled from months of Committee efforts to understand what has gone wrong in administering the CTC Project, despite unrelenting efforts by one staff person after another to deflect or push aside its concerns, or stall in providing critical information, while construction continues apace. Completion of this list has been delayed due to unfulfilled information requests for key documentation, including a complete copy of the exhibits to the Phase I Site Plan Enforcement Agreement, which are pivotal. The Committee will present this list to the Board as soon as practicable.

For present purposes, it is sufficient to emphasize that the staff has failed to stop construction despite developer failure to meet commitments that bar further work

¹ The enclosed 32-page history does not include copies of the referenced exhibit, which are voluminous. To ensure that these exhibits become part of the record, the Committee is sending a complete set of them attached to the copy of this letter being sent to Ms. Rosenfeld, with the request that the letter and all attachments be made part of the record.

Derick Berlage, Chairman
and Members of the Board
June 21, 2005
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until those obligations are met. To cite but one example, under Item 1(b) to Exhibit E to the Enforcement Agreement (of which we have only an incomplete copy), "All community-wide facilities within Site Plan 8-98001, must be completed and conveyed to the Association no later than the earlier of the receipt of a building permit for the 540th Lot/Unit or by fifteen (15) years from the date of the Site Plan Approval." More than 540 permits have been issued but the conveyance has not been completed. According to Exhibit E, this failure "shall preclude developer from receiving any additional building permits for that particular phase and all remaining phases until such time as the default is cured." Yet construction is unimpeded, as if developer commitments were either meaningless or unenforceable. This ought to be considered a serious oversight even if there were no building height or setback violations currently on the table. Yet months of Committee prodding for enforcement action and stop work orders have produced no movement, let alone progress.

All of these concerns are inextricably linked, and they are not going to be solved in the piecemeal fashion Ms. Rosenfeld envisions. It is particularly inappropriate for the staff to have already scheduled for hearing, as if a routine matter, the propriety of extending the Preliminary Plan or any Project Plan Amendments. The need to address the scheduling of these matters in light of the outcome of the July 7th hearing is especially critical if, as the Committee believes it must, the Board finds widespread Site Plan violations, infecting more than a majority of all CTC homes built or under construction.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David W. Brown", with a long horizontal flourish extending to the right.

David W. Brown

/enclosure

cc: Charles Loehr, Director
Michele Rosenfeld, Esq. (w/full attachments)
Rose Krasnow, Chief, Development Review
John A. Carter, Chief, Community-Based Planning
Barbara A. Sears, Esquire
Todd D. Brown, Esquire
Timothy Dugan, Esquire
Robert G. Brewer, Jr., Esquire
Clarksburg Town Center Advisory Committee

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|---------------|--|--|---|
| July 27, 2004 | Newland - Resident Meeting | <p>Newland held update meeting at Cedar Grove Church, Clarksburg, to present Site Plan for Town Center Retail area as intended for submission to M-NCPPC for Board review and amendment hearing.</p> <p>Over 100 CTC residents were in attendance and those present expressed strong opposition to the plans being presented by Newland (Gary Modjeska).</p> | <p>Residents realized immediately that the Retail Center as being proposed by Newland was severely flawed in design relative to the goals of the Master Plan, guidelines of the Project Plan and the concept marketed to them by the Developer and Builders.</p> <p>Specific issues included:</p> <ul style="list-style-type: none"> - Center was not pedestrian-friendly (large parking lot in center of strip mall configuration) - Center depicted had severe reduction in retail and office square footage (250,000 sq. ft. proposed in Master/Project Plan; roughly 113,000 sq. ft. proposed by Newland) - Center did not meet Project Plan requirements for pedestrian-orientation and "unique" aspects of center to serve as "focal point for Clarksburg and surrounding area." - Center showed the addition of two four story multi-family dwelling units (not permitted under the approved Project Plan) - Issues with Library on Town Square Green (Library was intended for Town Square Green placement – still being worked out with MC Library staff and M-NCPPC/Newland at the time) - No senior center or other civic use building (as "promised" to Clarksburg Civic Association initially) |
| July 31, 2004 | Resident Meeting Invitation to attend an August 4, 2004 resident meeting | Kim and Carol hand-delivered invitations to every occupied residence in Clarksburg Town Center. (Over 200 invitations delivered). | <p>Kim Shiley and Carol Smith, having done previous work on investigating the retail center issues (both met with Wynn Witthans and Nellie Maskall of M-NCPPC prior to the Newland 7/27/04 meeting) realized the negative impact that Newland's proposed retail center would have if approved. They determined to hold a meeting with the community to advise them of the issues. Amy Presley (having gotten in touch with Kim and Carol via email on 7/28 as a follow-up to the 7/27 meeting) offered assistance in preparing a resident invitation and in hosting a resident update.</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|--|---|--|
| August 4, 2004 | Clarksburg Town Center Residents Meeting | <p>The meeting was held at the Hyattstown Fire Department and over 100 concerned residents attended. The meeting was led by Kim Shiley and Carol Smith. Residents were asked to sign in and names/phone numbers/ email addresses were collected for future follow-up.</p> <p>Issues pertaining to the proposed Retail Center design were discussed. It was determined that a committee should be formed for continued investigation and action on behalf of the residents. Volunteers were solicited and residents present confirmed the following volunteers as representatives for the Clarksburg Town Center Advisory Committee:</p> <ul style="list-style-type: none"> - Jerry and Regie Barbour - Tim Dearros - Randy DeFrehn - Lynn Fantle - Susan Frimond - Jen Jackman - Dennis Learner - Jeff Lunenfeld - Carolyn McAllister - Mark Murphy* - Niren Nagda - Amy Presley - Joel Richardson* - Kim Shiley - Carol Smith <p>*(not able to attend the 8/4, but added at 8/11)</p> | <p>Residents were all in agreement regarding shock at what was presented by Newland as compared to what was promised through marketing literature and through the Developer/Builders. Several residents confirmed builders having promised that CTC would be "like Kentlands, with little shops and restaurants, only better because of the additional green space." Strongest opposition arose relative to:</p> <ul style="list-style-type: none"> - Layout of retail in "strip mall" configuration - Reduction of retail/office space - Large square footage allocated to a grocer (vs. square footage left for other retail uses) - Lack of pedestrian orientation - Addition of residential units in retail area <p>The newly formed Clarksburg Town Center Advisory Committee (CTCAC) was tasked with researching the issues (review of Master and Project Plans and meetings with M-NCPPC) and developing a plan of action to advise Newland of the issues and encourage adherence to the Master Plan and Project Plan. The first meeting of the CTCAC was scheduled for August 11, 2004.</p> |
| August 7-11, 2004 | Research, communications and planning | <p>Several members of the committee began extensive research on documents already retrieved by Kim Shiley relative to Master Plan, Project Plan and CTC retail center site plan (and staff report).</p> | <p>Researched several documents and began "petition" letter to M-NCPPC Chairman. Established communications with Newland and M-NCPPC staff in preparation for a meeting with Newland (targeting week of August 23rd). Initiated communications with Nancy Hislop/Doug Duncan's office and received word that she is aware of the issues and would like to participate in ensuring development in accordance with Master/Project Plan. Nancy indicated that she would attend August meeting.</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-----------------|--|---|---|
| August 11, 2004 | Meeting at M-NCPPC | Kim Shiley, Carol Smith and Amy Presley met with Nellie Maskall (at 10:00am) and then spent 4 hours reviewing and copying relevant materials (Master Plan, Project Plan, Board Opinions, site plan and other documentation). | Noted that file information was incomplete; had difficulty locating certain site plans; noted discrepancies with Data Tables as contained in Staff Report vs. Project Plan Opinion. Discussed issues with Nellie and requested meeting with John Carter. |
| August 11, 2004 | CTCAC Meeting | First meeting of the CTCAC, held at Hyattstown Fire Department. Discussed communications with Newland and M-NCPPC to date, reviewed materials/information gathered – with specific attention to variations in plans from 1995 to 1997 to 2002 and implication of changes. Kim and Carol were confirmed as Co-Chairs of CTCAC; Joel Richardson and Mark Murphy (who indicated interest but were not confirmed at the 8/4 meeting) were confirmed as Committee members at this meeting. | Committee reviewed John Carter's comments that Newland Communities altered site plan is "not in conformance with either the Master Plan or the Project Plan" (reference Meeting Minutes attached, Page 1). Discussions were held regarding the suspicion that Bozzuto condominium buildings might be in violation of the height parameters and, also, discrepancies with Data Tables were discussed (reference Meeting Minutes attached, Page 1). (Meeting Agenda and Meeting Minutes attached.) |
| August 16, 2004 | "Petition" letter sent to Chairman Berlage – M-NCPPC | Letter outlined concerns with proposed Retail Center site plan amendment and deviations from the approved Project Plan guidelines. | (Letter attached.) |
| August 17, 2004 | Email to Josh Bokee (Councilmember Mike Knapp's assistant) | Letter advised Josh of the "petition" letter already sent to M-NCPPC Chairman with a copy to Mike Knapp and confirmed Josh's attendance at the August 26, 2004 meeting. | (Letter attached.) |
| August 17, 2004 | Email to Catherine Matthews and Nancy Hislop | Letter advised of the August 26, 2004 meeting and requested attendance. | (Letter attached.) |
| August 17, 2004 | Email responses from Catherine Matthews and Nancy Hislop | Letters confirmed shared interest in maintaining the "theme of the town center" "one that promotes safe pedestrian activity, retail, eateries, the public library, park space, etc." | (Letter attached.) |
| August 23, 2004 | CTCAC meeting | Meeting held at the home of Kim Shiley to review draft of August 26, 2004 agenda and prepare for August 26, 2004 presentation. | Kim Shiley, Amy Presley, Carol Smith, Joel Richardson and Jen Jackman in attendance. |
| August 26, 2004 | Meeting between CTCAC, Newland, Newland Counsel, M-NCPPC Staff, Upcounty Regional Services Staff, County Council Staff, Montgomery County Public Library Staff and Clarksburg Civic Association (Refer to attendee list on Agenda attached.) | Meeting held at Hyattstown Fire Station. Intent of meeting was to discuss proposed Town Center retail Site Plan Amendment and other issues. CTCAC intended to videotape the meeting to share information with residents, but Newland counsel (Todd Brown) vehemently objected and threatened to have his client (Newland) leave the meeting if CTCAC insisted on taping (refer to Meeting Minutes attached). | CTCAC made presentation and then held open discussion on issues relative to Master Plan vision/ Project Plan guidelines. The height issue was first officially brought up at this meeting (reference pages 3, 7, 8 of Meeting Minutes attached). John Carter agreed that in view of needed design balance of West side/East side (retail), the September 30, 2004 hearing should be delayed until progress was made to address the East side issues (reference pages 7-9 of Meeting Minutes attached). |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|--------------------|---|--|---|
| August 30, 2004 | Follow-up emails sent to meeting attendees | John Carter was advised, in a second email, that the CTCAC had supplemental questions pertaining to the Project Plan requirements and the overall site plan approval process. A meeting with John Carter was requested. | (Letters attached.) |
| September 5, 2004 | Resident Meeting Invitation to attend a September 16, 2004 resident meeting | Kim Shiley, Carol Smith and Amy Presley hand-delivered invitations to every occupied residence in Clarksburg Town Center. (Over 200 invitations delivered). | (Invitation attached.) |
| September 13, 2004 | Emails/letter to and from Kim Ambrose / Newland | Letter sent to Newland in response to email received from Kim Ambrose proposing meeting with CTCAC in mid-October. | Committee felt that mid-October was too late for a follow-up meeting with Newland (especially in view of the fact that the Committee was still under the impression that Newland had not withdrawn the submission for the September 30, 2004 Hearing). (Letters and responses attached.) |
| September 14, 2004 | Meeting at M-NCPPC | Kim Shiley, Amy Presley, and Carol Smith met with John Carter, Nellie Maskal, Sue Edwards and Wynn Witthans to discuss more specifically the retail issues, supplemental questions to Project Plan conformance, M-NCPPC ideas regarding Library relocation, etc. | Specific concern was expressed to John Carter and Wynn Witthans regarding Newland's proposed residential within the retail area. Also discussed was the lack of sufficient retail space allocation, the size of the grocer (as compared to the balance of retail/office) and the height issue was brought up again. Wynn had to leave the meeting early, but John Carter made it clear to her prior to her leaving the meeting that research needed to be done on heights of condos. He also advised her that condos should not be on the main street within the retail area and suggested that the plan return to the original project plan proposal on that issue. Wynn confirmed that input had already been given by her to Newland requesting that they revise the submission to take these items into account. She agreed to follow-up on all issues, including height. |
| September 16, 2004 | Clarksburg Town Center Residents Meeting | The meeting was held at the Hyattstown Fire Department, with over 100 residents in attendance. The meeting was led by Kim Shiley, Amy Presley and Carol Smith. Residents were asked to sign in and supplemental names/phone numbers/email addresses were collected for future follow-up. | Residents were given an update on discussions and/or meetings held with M-NCPPC and Newland since the August 26, 2004 meeting. (Meeting Agenda attached.) |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-----------------------|--|---|---|
| September 21-22, 2004 | Email correspondence between CTCAC members | Ongoing correspondence confirming discussions with M-NCPPC regarding height verification and other issues, confirmation of discussions with Newland, planning for Clarksburg Civic Association meeting, etc. | (Emails attached.) |
| September 27, 2004 | Email to Wynn Witthans, M-NCPPC | <p>Email sent from Kim Shiley, with copies to John Carter, confirming recent attempts to get in touch with Wynn regarding requests for information.</p> <p>Email from Carol Smith to Kim Shiley noting that Wynn had advised that an inspector would be sent out to measure heights for the condos and also that she would confirm heights for 2/2's (not yet being constructed).</p> <p>(Emails attached.)</p> | <p>CTCAC explicitly spelled out the requests for clarification of:</p> <ul style="list-style-type: none"> - Heights - Discrepancies with Data Sheet (referring to previous discussion with Wynn questioning variances in Staff Report Data Sheet as compared to approved Project Plan Data Sheet) - Changes to the approved Project Plan relative to location of various multi-family, single family and townhouse units - Changes relative to the Church vista - Location of pool in town square area and absence of proposed tennis court (reduction of approved recreational amenities) |
| September 27, 2004 | Clarksburg Civic Association meeting | Kim Shiley and Amy Presley attended meeting to discuss recently proposed plans for the retail center and to provide an update on CTCAC activities. | CCA was unaware of proposed changes. Their response to residential units proposed within the retail was particularly negative. They also expressed extreme disturbance relative to the proposed retail square footage in terms of adequacy and expressed agreement with the CTCAC/CTC residents' expectations for adherence to the Master/Project Plans to create a town center that was a "unique" focal point for the entire study area. |
| September 27, 2004 | Email to Wynn Witthans, M-NCPPC | Email sent to Wynn Witthans from Kim Shiley confirming phone conversation of September 27, 2004. | <p>Wynn Witthans advised Kim Shiley via phone conversation that she would NOT be following up relative to the project building height verification. Rather, she requested Kim Shiley to get in touch with Newland on this issue and to retrieve any documentation or validation of height requirements and compliance from them.</p> <p>Wynn also responded regarding changes to multi-family and single family attached units and to recreation areas, etc. stating that the Project Plan "merely showed a series of sample blocks" which are "not binding." (Email attached.)</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|--------------------|---|--|---|
| September 29, 2004 | Email correspondence between CTCAC members | Emails between Kim Shiley and Amy Presley discussing lack of response from M-NCPPC, lack of appropriate information on site plans and ambiguity within the documentation/process. | (Emails attached.) |
| September 29, 2004 | CTCAC meeting | Meeting held at the home of Kim Shiley. Discussions were held on recent interactions with M-NCPPC and planning for upcoming meeting with Newland. | Action plan included scheduling a conference call with John Carter to confirm his position on issues and discuss response from Wynn. |
| September 30, 2004 | Email response from Wynn Witthans to Kim Shiley Emails between CTCAC regarding Wynn Witthans' email response | Wynn responded to Kim Shiley to "clarify" her summary of their prior phone call. She positioned that the Project Plan provides only one level of design while allowing for "morphing" which can lead to "differences of opinion." She emphasized that the Project Plan will be upheld through subsequent approvals. (Emails attached) | Note that although Kim's initial email to Wynn was also copied to John Carter, Nellie Maskal, and Sue Edwards, Wynn's response was only to Kim Shiley. Follow-up email between CTCAC members indicates the sense that Wynn had deliberately eliminated John Carter from the correspondence and that information contained about what John allegedly discussed with her did not align with what the group had heard from John from the August 26, 2004 meeting forward. It was determined that John needed to be made aware of the correspondence. |
| October 1, 2004 | Email to John Carter from Amy Presley | Email sent to John Carter from Amy Presley requesting a conference call to discuss "pressing issues relative to the concerns presented at the last meeting "(meeting with Amy, Kim, Carol, John, Nellie, Wynn, and Sue Edwards). The email to John Carter included Amy Presley's responses to each point of the email sent by Wynn Witthans to Kim Shiley on September 30, 2004. | Excerpts from email to John Carter: - "Our understanding was that Wynn had agreed to have a zoning enforcer sent out to the site to determine the heights and review that against the Project Plan requirements. It seems odd to try to get this information from the developer. Nellie advised that we could make the request directly to Michael Ma to have a zoning person sent out, but based on Wynn's response, we are unsure how to proceed. Additionally, Nellie mentioned that the height limits are recorded on the site plan attached to the Project Plan with Board approval. We are having difficulty determining exactly which plan should be used as the final reference here." continued... |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-----------------|--|---|--|
| October 1, 2004 | Email to John Carter from Amy Presley (continued) | | <p>Excerpts from email to John Carter (continued):</p> <ul style="list-style-type: none"> - "We are unclear as to why Wynn references the original plan when necessary to support the developer changes, but not to support (in our opinion) the intent of the Master Plan." - "It seemed quite clear to us that you expressed a desire to see the developer return to the original project plan relative to the town square and streetscapes – i.e. layout/types of buildings, and as you mentioned, even "down to the number of awnings," etc. We would like to know how much flexibility is afforded the developer under the "morphing" principle. This seems too vague to us and we would like to know the parameters." - "We are already seeing that the project plan is not being upheld to the degree we feel necessary... we see loopholes being created through approval of certain amended plans. We need assistance in determining how to help M-NCPPC ensure that the Master Plan and integrity of the concept are upheld." - "With the notion of allowable "morphing," we have growing concern relative to the newly proposed hearing date of Oct. 28 for the West side of the Town Square/Phase 1A approval." <p>(Email attached.)</p> |
| October 1, 2004 | Conference call with John Carter – M-NCPPC and Kim Shiley, Amy Presley and Carol Smith | Objective of the call was to discuss the emails received from Wynn and to clarify John's thoughts on open issues. | Although phone meeting minutes were not taken, the CTCAC group recollection is that John was consistent in maintaining the views he had already expressed relative to the importance of streetscapes being upheld as proposed in the Project Plan and Preliminary Plan and the need to ensure scale and compatibility with the historic district, etc. He also referred the group to Michael Ma in terms of discussions on height inspection/enforcement. |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|------------------|---|---|---|
| October 11, 2004 | Meeting at M-NCPPC with Nellie Maskal; Meeting with Michael Ma; Research, review and document copying | <p>Kim Shiley and Amy Presley spent four hours at M-NCPPC continuing to search for site plans, meeting with Nellie Maskal and then Michael Ma, and reviewing and copying documents. Met with Nellie Maskal first to determine how to access appropriate documents. Nellie advised that Wynn Witthans should be able to provide site plans (with height references) for the buildings in question and also referred us to Michael Ma for further assistance regarding enforcement issues.</p> <p>Met with Michael Ma to discuss issues to date with lack of responsiveness from Wynn, difficulty in accessing information that should be readily available in the files, and specific concerns about the height of the Bozzuto condominiums. Discussed with Michael our findings to date regarding inconsistencies with data tables and other records.</p> | <p>Wynn Witthans did not assist with our efforts, but once again merely allowed us to search through her files. There was great difficulty in locating pertinent documents. As of this date, we were still unable to retrieve site plans specific to the Bozzuto condominiums or plans pertinent to future 2/2's. This situation was discussed at length with Michael Ma. Michael advised that he was unfamiliar with the Clarksburg Town Center project, but that he would review the site plans and files to investigate the issues. We discussed our fear that additional buildings were going to be built that also might violate the height restrictions. He stated that staff may have made a mistake with site plans for the Bozzuto condominiums, but that he would ensure that no future mistakes were made. He also referred us to Douglas Johnsen, advising that we should request an inspection/site plan enforcement visit from him.</p> |
| October 12, 2004 | Meeting with CTCAC and Newland | <p>Meeting held in Rockville (at conference location on Rockledge Drive). Attendees:</p> <p><u>Newland:</u></p> <ul style="list-style-type: none"> - Rick Coutreau, Regional Vice President - Kim Ambrose, Vice President - Les Powell, CPJ - Todd Brown, Linowes & Blocher <p><u>Cooper Cary Architects:</u></p> <ul style="list-style-type: none"> - David Kitchens <p><u>CTCAC:</u></p> <ul style="list-style-type: none"> - Kim Shiley - Carol Smith - Amy Presley - Jen Jackman - Tim Dearros - Randy Defrehn - Joel Richardson - Mark Murphy | <p>Discussions were held regarding the residents' desires for a true new urban design and Town Center that would serve as a strong focal point and draw for the community and beyond (in accordance with the goals of the Master Plan). Comparisons were made by David Kitchens to Bethesda Row and the intent to design a center along those lines (although scaled back) was expressed. The CTCAC presented ideas gathered by the community as well as issues of the most concern, including the 63,000 sq.ft. allocation of retail for a grocery store. Newland verbally committed to incorporating the ideas and addressing the issues as discussed with the CTCAC team and to preparing revised design options for presentation and review at a meeting to be held October 26, 2004. Committee asked for verification of heights of condos and 2/2's and Newland advised that they would get that information for us.</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|------------------|-------------------------------|---|-------------------|
| October 13, 2004 | Email to Kim Ambrose, Newland | Email from Amy Presley to Kim Ambrose, thanking her for hosting the meeting between Newland and CTCAC. | (Email attached.) |
| October 13, 2004 | Email to Nellie Maskal | Email from Amy Presley to Nellie thanking her for her time and assistance, and for her referral to Michael Ma. | (Email attached.) |
| October 13, 2004 | Email to Michael Ma | <p>Email by Amy Presley to Michael Ma confirming issues discussed with him on October 11, 2004. Excerpts from email:</p> <ul style="list-style-type: none"> - "We appreciate your willingness to review existing site plans to determine compliance with the Master Plan and Project Plan guidelines. We will also be further reviewing the issues we discussed relative to placement of significant buildings and other potential deviations to initially proposed site designations for various residential, commercial and amenity locations." - "We were unable to find a copy of the approved site plan containing the Bozzuto condominium we discussed, and Wynn was only able to advise us that she confirmed with the developer that it was 4 stories..." - "We appreciate your offer to follow up on the specific height issue relative to the 4-story/45' height limitation clearly designated within the Project Plan Guidelines vs. the Bozzuto condominium height which we are certain exceeds the limitation." - "As you directed, we will be in touch with Douglas Johnsen to discuss our concerns and request zoning enforcement assistance." - --- - "...we appreciate your further investigation." | (Email attached.) |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|---------------------|----------------------------------|---|---|
| October 19-25, 2004 | Emails between CTCAC members | <p>Emails regarding recent conversations and upcoming (October 20) meeting preparation. Quotation of Nancy Floreen's statement to Newland at the recent CCA meeting: "This better not be another strip mall"</p> <p>Email from Josh Bokee advising that Mike Knapp wanted to schedule a meeting</p> <p>Emails between Carol Smith/Amy Presley/Kim Shiley showing concern for notification to all residents and discussing frustration over lack of response to height questions on 2/2's.</p> | <p>Note that Mike Knapp changed his initial meeting time from 7pm to 8 pm. Based on the change, and CTCAC having already sent notification to residents of a 7pm meeting time, CTCAC determined to use the additional hour to provide an update residents.</p> <p>Note that the Committee was going to extreme lengths (getting name and address information from tax records) to try to get notification to ALL residents regarding meetings and follow-up of CTCAC activities on behalf of the residents (reference Carol Smith email). (Emails attached.)</p> |
| October 25, 2004 | Email to Kim Shiley, CTCAC | Email to Kim Shiley from Amy Presley confirming messages left for and conversation with Douglas Johnsen. | (Email attached.) |
| October 25, 2004 | Email to Kim Ambrose, Newland | <p>Email sent to Kim Ambrose by Amy Presley, confirming meeting scheduled for October 26, 2004 at 4:00pm with CTCAC and Newland. Excerpt from email:</p> <p>"On a separate note, we would like to get copies from you of the architectural elevations and site plans for the Bozutto condos (existing) and the 2over2's (under construction). We would specifically like verification of the heights for these buildings (not in "stories" but in "ft."), as well as heights of structures planned for Section 3. Your assistance in making these available to us at the meeting would be greatly appreciated."</p> | <p>The Committee decided to put into writing the specific request for height information, as this was the third or fourth request for height information from the developer, and to date no information had been provided.</p> <p>Note that copies were sent to:</p> <ul style="list-style-type: none"> - Nellie Maskal - John Carter - Wynn Witthans - Michael Ma - Douglas Johnsen <p>(Email attached.)</p> |
| October 26, 2004 | Phone call between CTCAC members | Kim Shiley, Amy Presley and Carol Smith discussed the revelation that Newland was scheduled to meet with M-NCPPC prior to CTCAC's scheduled meeting with Newland that afternoon. Kim mentioned concern over reasons for Newland meeting with M-NCPPC first. Fear was that Newland could be attempting to convince and coordinate with Staff regarding their push for residential addition in the retail area, as well as their viewpoint on heights. Speculation was that meeting was in response to CTCAC's mounting efforts to prove issues of non-conformance with Project Plan. | Fear of group was that Newland would somehow coerce M-NCPPC Staff into agreement and then railroad CTCAC into acceptance of their revised plan. Kim Shiley predicted that the plans Newland would present to CTCAC would not show an increase in retail, would not show a reduction in allocation of square footage to the grocery store, and would continue to show a multi-family residence within the retail area previously zoned as retail/ office. She further predicted that they would not address the height issues. Determination was made to keep an open mind during the meeting and respond appropriately after plans were reviewed. |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|------------------|--------------------------------|--|---|
| October 26, 2004 | Meeting with CTCAC and Newland | <p>Meeting held in Rockville (at conference location on Rockledge Drive). Attendees:</p> <p><u>Newland:</u></p> <ul style="list-style-type: none"> - Rick Coutreau, Regional Vice President - Kim Ambrose, Vice President - Les Powell, CPJ - Todd Brown, Linowes & Blocher <p><u>Cooper Cary Architects:</u></p> <ul style="list-style-type: none"> - David Kitchens - Trini Rodriguez <p><u>CTCAC:</u></p> <ul style="list-style-type: none"> - Kim Shiley - Carol Smith - Amy Presley - Tim Dearros - Niren Nagda - Joel Richardson - Randy Defrehn <p>Meeting was held to present proposed revisions to the retail plan following input from CTCAC at the October 12, 2004 meeting. David Kitchens presented two new designs. New designs did not show reduction of grocery store square footage or increase in retail square footage as previously requested by the Committee. The Committee agreed to review the designs and respond with written comments.</p> | <p>Meeting was opened by Rick Coutreau expressing his displeasure at the Committee's recent interactions with M-NCPPC regarding the "height issue" and other issues of concern to the community pertaining to CTC development. He advised that he expected the Committee to be working with Newland directly and did not appreciate the Committee going through a back door with M-NCPPC without advising Newland of issues other than the retail center issues under discussion over the past months. He asked whether there were "other issues that the County is aware of that we are not?" and stated that he "would rather hear from our group and not the county on these issues."</p> <p>Amy Presley and Kim Shiley advised that Newland was made aware of the height issue on multiple occasions from the August 26, 2004 meeting forward.</p> <p>Kim Ambrose denied having been apprised by the Committee of the height issue and added that she would appreciate the Committee discussing all issues "here instead of at M-NCPPC." She also asked whether "there are other things we need to worry about?"</p> <p>Todd Brown interjected that "we all need to work together" and that "we are here to negotiate..." Before Todd finished his sentence, Rick Coutreau slammed his fist down on the table, exclaiming "The word 'negotiation' is not on this table! The word 'dialog' is in play." He then brought the meeting back on track by reminding the Committee that Newland was open to hearing from us and that in good faith they were trying to incorporate our ideas into the redesign of the retail, and that "that's what these meetings are about." He requested that we submit a list of our issues and that in the future we would work with them directly. He then invited David to present the revisions to the retail center plan.</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|------------------|--------------------------------|--|--|
| October 29, 2004 | CTCAC meeting | Meeting held at the home of Kim Shiley to discuss design options presented by Newland and prepare response. | Key issues included the need for more retail, better allocation of space, and elimination of proposed residential units. (Meeting Agenda attached) |
| November 5, 2005 | Meeting with CTCAC and M-NCPPC | Purpose of meeting was to review and discuss retail design options presented by Newland and to get clarification on current issues relative heights of buildings, etc. Meeting attendees included John Carter, Nellie Maskal, Michael Ma, Sue Edwards, and Wynn Witthans from M-NCPPC; Kim Shiley, Carol Smith, Tim Dearros, Niren Nagda, Lynn Fattle, and Tricia Larade of CTCAC; and Kathie Hulley of CCA. | Discussions focused on community upset over retail center - proposed residential units, reduction in retail square footage and size of grocery. Option for moving library from the town square green to the retail area was suggested by M-NCPPC as a potential to alleviate parking dilemma. Committee agreed this could be an acceptable option. Issue of building heights was again brought up and Wynn Witthans advised that she had received information from the developer stating that the buildings in question were 57'. She also stated that the buildings conformed to the "four story" requirement of the Project Plan. |
| November 8, 2005 | Email to Wynn Witthans | Email to Wynn Witthans from Amy Presley on behalf of the CTCAC. Letter confirmed the Committees disturbance at Wynn's positioning of buildings in question as acceptable and requested action regarding buildings in violation. (Email attached.) | Excerpts from letter: "...disturbed to hear that you would attempt to position the buildings in question as acceptable based on a "four story" height limitation, when the Project Plan Guidelines specifically define the height limitation as 45' for residential. We certainly expected that M-NCPPC would not only be aware of the guidelines, but would diligently ensure adherence to such." "The CTCAC unanimously agrees that buildings exceeding the height restrictions in the project plan guidelines must be altered to comply." "We must also have assurance from M-NCPPC that existing approved site plans that are in violation of Project Plan guidelines (conditions and findings) will also be addressed with the Board and appropriately rectified with the developer. Further we would expect that more stringent attention will be given to future site plan reviews to ensure adherence to all Project Plan conditions and findings. The CTCAC representatives present at the meeting were pleased to hear your assurances on these issues. Please advise us of your action plan for handling the existing site plan violations." |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|--------------------------------|---|---|
| November 8, 2004 | Letter to Kim Ambrose, Newland | <p>Letter to Kim Ambrose from the CTCAC. Letter outlined Committee responses to options presented by Newland at the October 26, 2004 meeting. Letter also emphasized that Committee was awaiting response on height issues.</p> <p>(Letter attached.)</p> | <p>Excerpts from letter:</p> <p>“In our meeting of August 26, 2004, the issue of the height of the existing condominiums with reference to the 45’ height restriction in the approved Project Plan was raised, as was the height of the proposed two over two townhouse condominiums. Over the last two months, while we have repeatedly asked, we have not received specific answers or architectural drawings that clarify the height issues. We know that such information should be readily available with your architectural and engineering staff and/or subcontractors.”</p> <p>“The simple fact that our request has not been met leads us to conclude that there could be a problem. With respect to our serious concern with the height issues we want to stress again that the limits on heights, as approved in the project plan and pursuant to Chapter 59 of the Montgomery County code Project Plan must be met. Should these specified limits be exceeded in the construction to date that would constitute a violation which (i) would require remedial action with reference to the offending existing structures and (ii) assurances from you and your subcontractors that such limits will be abided by in all current and future development in the Clarksburg Town Center.”</p> |
| November 16, 2004 | Email to Wynn Witthans. | <p>Email to Wynn Witthans from Amy Presley on behalf of the CTCAC. Email confirms that CTCAC has not yet heard back from Wynn regarding the action plan for height violations.</p> <p>(Email attached.)</p> | <p>Excerpt from email:</p> <p>“We haven’t heard back from your office yet regarding the action plan for height violations discussed at the meeting with the CTCAC and your team on November 5th. We would like to know specifically what actions the M-NCPPC is planning to take. We would also like to know whether the CTCAC should write to Derick Berlage and the Planning Board to request action on this violation. Please include that information in your update to us.”</p> |
| November 29, 2004 | Email to Kim Ambrose, Newland | <p>Email to Kim Ambrose from Amy Presley confirming next design review meeting with Newland on December 8, 2004.</p> | |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|------------------|--------------------------------|---|---|
| December 5, 2004 | Email letter to Derick Berlage | <p>Letter to Derick Berlage from the CTCAC. Letter outlines urgent concerns over height violations.</p> <p>(Letter attached.)</p> | <p>Excerpts from letter:</p> <p>"As you may recall, per the letter you received from our group in August, 2004, the CTCAC (Clarksburg Town Center Advisory Committee) was formed in response to the Town Center residents' discovery of deviations by the developer (Newland Communities) to the Master Plan concept and Project Plan Guidelines. The residents elected the CTCAC to represent them in taking action with MNCPPC and the developer to ensure adherence to the vision and intent of the Master Plan."</p> <p>"We have determined multiple areas in which Newland has departed from the intent and vision of the Master Plan and, more seriously, violated the Project Plan Conditions and Findings. The most pressing issue is Newland's violation of the height restrictions. The approved Project Plan restricts building heights to 4 stories/45' for residential and 4 stories/50' for commercial. The Master Plan and Project Plan clearly state the necessity for ensuring compatibility of scale with the historic district. As confirmed to us by John Carter and Nellie Maskal of Community Based Planning, and Michael Ma of Development Review, this was a driver for the height limitation of 45' for residential structures."</p> <p>..." gravely disturbed that buildings already constructed in Phase 1-B3 of the CTC development (Bozutto condominiums) measure 57', as recently confirmed to CTCAC by MNCPPC Development review. Newland also confirmed a height in excess of 45', but stated that the building was 53'4". In either case, the structures are not compatible in scale with the historic district. This is a serious violation which requires immediate attention."</p> <p>"...there are also buildings currently under construction within Phase 2B (Craftstar 2/2 Condominiums – Parcels B & N) which also violate the height restrictions, with planned heights of 51'7".</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|--|---|---|
| December 5, 2004 | Email letter to Derick Berlage (continued) | | <p>Excerpts from letter (continued):</p> <p>"Further, there are several other site plans previously approved for Phase 2C which include additional Craftstar 2/2 Condominiums with planned heights exceeding the 45' maximum allowable according to the Project Plan Guidelines. Apparently, the site plans for these structures were erroneously approved, and/or the developer did not specify heights on the site plan (beyond "4 stories") and has violated the height restriction without MNCPPC's awareness. The CTC residents are seeking immediate action by MNCPPC to correct this situation before new buildings are constructed." <i>(emphasis added)</i></p> |
| December 10, 2004 | Email to Catherine Matthews | <p>Email to Catherine Matthews from Amy Presley as a follow-up to the Transportation Meeting.</p> <p>(Email attached.)</p> | <p>Excerpts from email:</p> <p>"It was wonderful to hear your views regarding Clarksburg Town Center and to know of your support of our efforts to uphold the Master Plan and Project Plan vision and intent."</p> <p>"We take the building of our Town Center very seriously and are willing to do whatever necessary to ensure compliance with the Master Plan vision. As you know, it is the last chance along the 270 corridor to get this right!"</p> |
| December 13, 2004 | Meeting with M-NCPPC Staff and CTCAC | <p>Meeting with John Carter, Rose Krasnow, Michael Ma, Wynn Witthans, and Sue Edwards of M-NPPC, and Kim Shiley, Amy Presley, Carol Smith, and Niren Nagda of CTCAC. Meeting was held in response to ongoing, unanswered requests for action on height violation issues. Intent of meeting was to introduce Rose Krasnow and to discuss specific items for resolution. Committee members made it clear that they expected the Staff to issue a violation notice to Newland.</p> | <p>Note that Wynn Witthans did not bring the site plans in question to the meeting. Both Michael Ma and Wynn stated to the Committee members that no height was provided on the site plans, only a notation of "4 stories." Michael Ma suggested there may have been an error in approving the past site plans, but that that would not happen going forward. Regarding Bozzuto condominiums in violation, Michael stated that landscaping could be provided to compensate for height. The group made it clear that landscaping would not sufficiently address the violation visually. Michael then suggested that the staff would work with us to focus on the retail issues and provide input to Newland to ensure that those areas were acceptable to the residents.</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|----------------------|--|---|
| December 14, 2004 | Email to John Carter | <p>Email to John Carter, Michael Ma, Wynn Witthans, Sue Edwards, and Rose Krasnow with confirmation of items discussed at the December 13, 2004 meeting. Copies sent to Councilman Mike Knapp, Catherine Matthews, Nancy Hislop, and Chairman Derick Berlage.</p> <p>(Email attached.)</p> | <p>Excerpts from email:</p> <p>"As discussed yesterday, violations must be called out by MNCPPC as violations. Otherwise, the entire validity of the Project Plan process is nullified. It is not appropriate to enable developers to arbitrarily deviate from Project Plan conditions and findings... especially in an RMX2 project under the "optional method of development" where such conditions and findings are "expressly tied to" and "not automatically severable" from the Project Plan, without remanding the entire Project Plan back to the Board for consideration."</p> <p>"There is a proper process for the Board to review and address such developer desires in a hearing <i>prior</i> to the construction of structures which clearly violate terms and conditions of the Project Plan."</p> <p>"As stated by Michael Ma, and confirmed by Wynn Witthans, the site plan(s) for the Bozutto condominiums as well as the 2/2's, did not contain specific height measurements – they merely stated "four stories." Therefore, we do not believe that MNCPPC is responsible for the violations."</p> <p>"... The developer is clearly accountable and responsible for compliance with all conditions and findings of the Project Plan. It is evident that the developer was aware of the 45' height limitation for residential structures, and, under the "Site Plan Enforcement Agreement," takes full responsibility for development in accordance with that limitation."</p> <p>"We cannot sit idly by while developers change Project Plans at whim, according to market drivers. We appreciate your help in ensuring the sanctity of the Master Plan/Project Plan process."</p> <p>"We will await your response regarding issuance of a violation notice to the developer."</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|--|---|--|
| December 21, 2004 | Email to Rose Krasnow | <p>Email to Rose Krasnow from Amy Presley regarding lack of response on request for violation notification.</p> <p>(Email attached.)</p> | <p>Excerpt from email:</p> <p>"We have not yet heard back from you regarding the height violation issues and are wondering whether MNCPPC intends to issue a violation notice to Newland. The CTCAC would greatly appreciate a written response before the end of this week."</p> |
| December 23, 2004 | Email and Letter to Kim Ambrose, Newland | <p>Letter to Kim Ambrose from Amy Presley regarding status of Committee response to recently reviewed design options.</p> <p>(Email and Letter attached.)</p> | <p>Excerpts from email:</p> <p>"All were pleased with the direction Newland is taking relative to the overall design, yet we still have some outstanding concerns."</p> <p>"Understanding your desire to move quickly towards a site plan hearing, we did not want to wait until after the holidays to submit our comments to you. The attached letter outlines our comments regarding the new concept."</p> <p>Excerpts from Letter:</p> <p>"The new design is visually interesting..."</p> <p>"The new location establishes the library as a "significant" building, as appropriate according to the Master Plan/Project Plan."</p> <p>"Regarding functionality, specifically with respect to the Master Plan/Project Plan vision and guidelines for the Town Square retail area, there are several issues of great concern still outstanding with the new design. We find the following issues to be of most significant concern:</p> <ul style="list-style-type: none"> - Reduction of Retail/Office Space..." <p>"The grocery store in the new design has a footprint of 63,000 sq. ft. This accounts for more than half of the total retail area planned, leaving a balance of only 53, 500 sq. ft. for other retail establishments. We find, and are supported by county officials, that the planned grocery store is too large for the scale of the community and should be reduced to allow for other retail and/or entertainment space (as encouraged by the Master Plan to create a unique and lively focus)."</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|--|--|---|
| December 23, 2004 | Email and Letter to Kim Ambrose, Newland (continued) | | <p>"The footprint of the grocery store (Giant) at Kentlands is 60,854 sq. ft. We do not need a grocer of that size to support this area. If so, then we also need retail proportionate to that of the Kentlands."</p> <p>"If the grocery store is intended as the sole anchor to achieve a destination center draw, competition with the Cabin Branch and Clarksburg Village retail areas and grocer (to be built soon after Clarksburg Town Center) should be considered. Thought and commitment must be given to creating a unique draw to the Town Square/Retail center – such as the addition of entertainment space (movie cinema cafes/theater, etc.) – not merely a large grocery store. Again, "create a Town Center which will be a strong, central focus for the entire study area."</p> <p>"As noted, we find an appropriate mix of retail and office space to be critical to supporting the Master Plan/Project Plan vision for Clarksburg Town Center. Based on the plan presented we do not see an appropriate allocation of retail/office space to accommodate the mix of uses envisioned."</p> <p>"The addition of residential units within the retail area of the Town Square is not in accordance with the Master Plan/Project Plan and reduces the amount of office/retail space available. W suggest eliminating the residential units...to provide for office space (2nd floor) above retail (1st floor) along Clarksburg Square..."</p> |
| December 24, 2004 | Email from Rose Krasnow | <p>Email response from Rose Krasnow to Amy Presley regarding meeting follow-up and request for issuance of violation.</p> <p>(Email attached.)</p> | <p>Email excerpt:</p> <p>"I am well aware that you had hoped to receive a response from me by the end of this week, and I apologize that I am not meeting that deadline. I should have a response to you either Monday or Tuesday."</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|---------------------------------|--|---|
| December 30, 2004 | Letter from Rose Krasnow | <p>Letter from Rose Krasnow to Amy Presley, on behalf of CTCAC, regarding subject: "Building Heights in Clarksburg Town Center Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014.</p> <p>Despite actual heights contained on Site Plan Phase I and Site Plan Phase II, Rose Krasnow responded that buildings were not in violation. Committee determined (through use of Word "Properties" function) that Wynn Witthans was the author of the document.</p> <p>Committee was outraged by contents of the letter which clearly did not accurately reflect the situation or the appropriate resolution.</p> <p>(Letter attached.)</p> | <p>Excerpts from letter:</p> <p>"Following review of all pertinent documents and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 ("Site Plan") is consistent with Project Plan No. 9-94004 ("Project Plan"); (2) that finding was properly made; and (3) the buildings in question comply with all conditions and development standards attached to the Site Plan. Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so."</p> <p>... "With respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards; and, therefore, in Commission Staff's view, the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations."</p> <p>"At the December 13 meeting, there appeared to be a consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation – it only specifies that the buildings will be four stories – and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the "two-story over two-story" (2/2) buildings) are in conformance with the Planning Board's approval of the Site Plan."</p> |
| January 1, 2005 | Email to Dorothy Krass, M-NCPPC | Email to Dorothy Krass from Amy Presley, confirming meeting with Derick Berlage on January 10, 2005 at 4:00pm. | (Email attached.) |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
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| January 10, 2005 | Meeting with Derick Berlage, M-NCPPC Chairman | <p>Meeting with Derick Berlage, John Carter and Sue Edwards of M-NCPPC and Amy Presley, Kim Shiley, and Carol Smith of CTCAC. Meeting was scheduled by Committee to discuss the serious nature of the violations within CTC, to alert the Chairman to the length and scope of the Committee's attempts to gain resolution through M-NCPPC staff, and to implore the Chairman to issue a violation notice to the developer.</p> <p>Committee prepared a Table (Clarksburg Town Center Development – Documentation Relative to Height Restrictions) for discussion with Derick. (Note: At the time of scheduling the meeting with Derick, the Committee just received Rose Krasnow's letter. The Committee had not yet formally responded, but brought the letter to the meeting with Derick for discussion.)</p> <p>Committee discussed history of interactions with M-NCPPC staff, requesting that Derick take a closer look at the issues and violations. Derick advised that, from his legal perspective, "the case could be effectively argued either way." He also advised that a formal "violation hearing" would have to be held to make the determination. He agreed to further review the information we presented and determine if it warranted such a hearing.</p> <p>Derick requested that the Committee prepare it's written response to the December 30, 2004 letter received from Rose Krasnow and submit it to him, along with other commentary and formal request for a violation hearing.</p> <p>(Agenda and Documentation table attached.)</p> | <p>Excerpts from Agenda:</p> <ul style="list-style-type: none"> - III. Height Violation Discussion - Master Plan - Project Plan - Montgomery County Codes - Preliminary Plan - Site Plan - Site Plan Enforcement Agreement" <p>Excerpts from Documentation table:</p> <p>"... The first and only appearance of this altered data table among M-NCPPC documentation is within Wynn's Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden... the "Findings" approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer's desires."</p> <p>"The Developer and its legal counsel were aware of the conditions for development of RMX2 under the "Optional Method" of development... 59-D-3 requires height specification, as well as assurance that buildings are consistent with the approved Project Plan."</p> |
| January 11, 2005 | Email to Derick Berlage, John Carter, and Sue Edwards | Email to Derick Berlage, John Carter, and Sue Edwards from Amy Presley following up on the January 10, 2005 meeting. | (Email attached.) |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
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| January 19, 2005 | Email to Councilman Mike Knapp | <p>Letter to Mike Knapp from Amy Presley following up on Committee's meeting with Derick Berlage. (As Mike was instrumental in arranging a meeting with Derick, and the Committee was having ongoing conversations with him pertaining to the situation in CTC, he requested that we keep him apprised and follow up with him after our meeting with Derick.)</p> <p>(Email attached.)</p> | <p>Excerpts from email:</p> <p>"As promised, I have attached a copy of the document we prepared for our meeting with Derick Berlage. The document outlines pertinent details from the Master Plan, Project Plan, Zoning Ordinances, site Plan and Site Plan enforcement pertaining to height issues for CTC."</p> <p>"For your information, John Carter and Sue Edwards also attended the meeting (they were invited by Derick). We are certain that John agrees with our position and not sure why his opinion is not contained in the "Staff Opinion" submitted by Rose relative to the height issues. It seems that Rose's team (Development Review) provided the only input to the Staff Opinion on the height violations."</p> <p>"We believe that we must hold M-NCPPC accountable. The Master Plan/Project Plan process is invalidated if at the last stage (in Development Review), developers are enabled to breach agreements and standards previously approved by the Board."</p> <p>"We greatly appreciate your assistance in upholding the Master Plan concept for CTC and in ensuring accountability/enforcement within M-NCPPC."</p> |
| January 20, 2005 | Emails between CTCAC Members and Bozzuto | Emails regarding meeting requested by Bozzuto to review proposed Manor Home changes. | (Emails attached.) |
| January 26, 2005 | Email/Letters to Chairman Derick Berlage. | <p>Email package sent to Derick Berlage from Amy Presley, on behalf of the CTCAC.</p> <p>Package contained an email, cover letter, letter with embedded response to Rose Krasnow's December 20, 2004 letter, and Document table (Documentation Relative to Height Restrictions).</p> <p>(Email and Letters attached.)</p> | <p>Excerpts from Letter dated January 25, 2004 (05 - letter was mis-dated):</p> <p>"The CTCAC, and the entire Clarksburg community, had placed its faith in M-NCPPC, expecting M-NCPPC to faithfully serve as guardians of the Master Plan intent and to ensure adherence to the Board-approved Project Plan. Unfortunately, we find not only that the M-NCPPC Staff has been grossly negligent in the Site Plan review process, but, based on the subsequent Staff determination regarding the height violations, has fallen abysmally short of serving the citizens of Clarksburg."</p> |

Clarksburg Town Center Development – History of CTCAC Actions

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| January 26, 2005 | Email/Letters to Chairman Derick Berlage (continued) | (Email and Letters attached.) | <p>Excerpts from Letter (continued):</p> <p>"We respectfully request a full Board hearing on this issue."</p> <p>"We would like the Board to consider this letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 59-D3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse."</p> <p>"In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10th will be greatly appreciated."</p> <p><i>Note regarding Rose Krasnow Letter with Embedded Comments:</i></p> <p><i>As of this time, the Committee had not received or located the unaltered site plans for the buildings in question, nor did it understand the significance of the Signature Site Plan and its data table. The Signature Site Plan set was not provided to the committee (although requests for complete site plan documentation were made of Wynn Witthans and then Michael Ma on several occasions prior) until days before the April 14, 2004 Height Threshold Hearing. Even then, the documents were only retrieved through the personal assistance of Rose Krasnow. The Committee, at time of preparation of the response to the December 30, 2004 letter from Rose, could only argue based on a requirement for Site Plans to conform to Project Plan requirements, and that "4 stories" would have to be interpreted by the definition of "4 stories" as contained within the Project Plan Data Summary.</i></p> |
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Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
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| February 1, 2005 | Meeting with CTCAC members, Kathie Hulley of CCA, Clark Wagner, Vice President & Director Development Services and Jackie Mowrey of Bozzuto, and Les Powell of CPJ | Meeting intent was to review with CTCAC the proposed increase from 9 to 12 units per Manor Home, in preparation for Amendment Hearing scheduled for February 10, 2005. Committee and Kathie Hulley gave input and agreed to testify on behalf of Bozzuto at the hearing. | At meeting, Amy Presley asked Les for the height of the buildings. Les responded "4 stories," laughing. Amy clarified, "No, Les, not in stories, in feet and inches" to which Les responded "Hey, I was told to put '4 stories'. Wynn told me to write it as '4stories'." |
| February 1, 2005 | Emails between Wynn Withans, M-NCPPC and Amy Presley, CTCAC | Email string regarding misinterpretation by Wynn Withans of Committee request. (Email string attached.) | Excerpt from Wynn's email: "I am aware that you already know this as you, and your group have been in contact with others in our agency with various questions. If you would prefer to receive answers to your questions more directly, I invite you to contact me directly. Then my colleagues won't have to ask me and then get back to you!" |
| February 3, 2005 | Meeting with CTCAC and Newland | <p>Meeting held in Rockville (at conference location on Rockledge Drive). Attendees:</p> <p><u>Newland:</u></p> <ul style="list-style-type: none"> - Rick Coutreau, Regional Vice President - Kim Ambrose, Vice President - Les Powell, CPJ - Todd Brown, Linowes & Blocher <p><u>Cooper Cary Architects:</u></p> <ul style="list-style-type: none"> - David Kitchens - Trini Rodriguez <p><u>CTCAC:</u></p> <ul style="list-style-type: none"> - Kim Shiley - Carol Smith - Amy Presley - Tim Dearros - Niren Nagda <p>Meeting was held by Newland to discuss retail center comments submitted by Committee to Newland (Response to Options 1 and 3) and to present Newland's final design.</p> | <p>Committee discussed outstanding issues with reduced square footage, addition of residential, allocation of square footage, and concerns about grocery store size as well as concerns regarding types of establishments that might be contracted by Regency for the Town Center retail.</p> <p>Kim Ambrose stated that they were comfortable with the changes they had made in response to our Committee and intended to submit what they had for site plan review. She also stated that they would be scheduling a presentation of the current design to the CTC residents.</p> <p>Committee made clear that it was very pleased with the David Kitchens and Trini Rodriguez and felt the center would look beautiful (contingent upon implementation along the lines of architectural detail as depicted in the drawings presented), but that it still had opposition to the residential units and misgivings about the commitment to ensure adequate and appropriate selection of retail tenants.</p> <p>In response to concerns about the types of retail establishments needed for appropriate Town Center functionality and "draw," Kim Ambrose and Rick Coutreau offered to schedule a meeting for Committee with Regency representatives.</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|------------------------------|---|--|
| February 10, 2004 | Manor Home Amendment Hearing | <p>Committee members Kim Shiley, Carol Smith and Amy Presley attended the hearing and gave testimony supporting Bozzuto's request for modification of homes from 9 to 12 units each.</p> <p>(Testimony attached.)</p> | <p>Excerpts from testimony:</p> <p>"We are Co-Chairs of the Clarksburg Town Center Advisory Committee, known as the CTCAC. We represent the residents of Clarksburg Town Center. The residents elected the CTCAC to represent them in interacting with MNCPPC and the developer in order to ensure adherence to the vision and intent of the Master Plan.</p> <p>It is important for the Board to know that the CTCAC and residents are in full agreement with the Land Use Objectives of the Plan, especially with regard to creating a pedestrian-friendly town center area to serve as the central focus for the entire study area. We support the development of Clarksburg Town Center; However, we believe that awarding a developer a project of this magnitude also conveys a serious responsibility to develop in accordance with the vision of the Master Plan, and with a sensitivity to the community at large.</p> <p>The developer must not only develop in accordance with the Master and Project Plans, but also in a way that will result in a functional Town Center – one that will adequately serve the residents and community well into the future.</p> <p>All of the residents bought in to Clarksburg based on the vision presented to them by the developer and the builders – that of a True Town center. Therefore, the CTCAC's focus is in reviewing all aspects of development from that perspective."</p> <p>"Although we have encountered several areas to date in which there has been a departure from the intent and vision of the Master Plan, with respect to today's hearing on the Manor Homes, we are in support of the developer's intent."</p> <p>(continued)</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|-------------------|--|-----------------------|---|
| February 10, 2004 | Manor Home Amendment Hearing (continued) | (Testimony attached.) | <p>"We believe that the development of the Manor Homes, specifically the addition of supplemental units, is in compliance with the Master Plan objective to "encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations." (p9) We welcome the development of the Manor Homes, with the stipulation that they be built in accordance with the scale and character of the surrounding community. In this regard, we have a few points for consideration:</p> <ul style="list-style-type: none"> - First, we would like assurance that the building heights will not exceed 45' (in accordance with the Project Plan #9-94004 and Preliminary Plan #1-95042 specifications). We have not seen on the Site Plan a specific denotation of height in feet and inches. We have only seen a denotation of "Four Stories"... which is not adequate." - "... we are concerned as to the building materials that will be used in the construction of the Manor Homes. Since the Manor Homes are significant buildings, some of which actually serve as "entry way" focal points, it is imperative that the buildings be constructed using the finest quality of materials for the façade. We suggest incorporating brick, stone and/or other elements ... compatible with the character of the other buildings in the community." <p><i>Note: The Board questioned Staff as to why there was no height present on the plans presented. Staff replied that the buildings were "4 stories." The Board required "guarantee" from Counsel for Bozzuto (Barbara Sears, Linowes & Blocher) that the buildings presented would not exceed 45'. The Board asked whether the builder/counsel would be willing to accept the 45' limitation as a condition of approval. Ms. Sears replied, on behalf of Bozzuto, that her client would accept that condition. The Board also asked whether, as a condition of approval, Bozzuto would agree to present designs for review and acceptance by CTCAC. Ms. Sears also agreed on that condition.</i></p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|----------------------|---|---|--|
| February 19-23, 2005 | Email string between Wynn Witthans and Kim Shiley | <p>Emails from Kim Shiley to Wynn Witthans confirming response from Wynn after request for information</p> <p>Email response from Wynn Witthans to Kim Shiley</p> <p>(Email string attached.)</p> | <p>Excerpts from emails to Wynn:</p> <p>"To re-cap the conversation we did have, you stated that:</p> <ul style="list-style-type: none"> - architectural elevations are not required to be submitted by the builders to you for site plan approval. - that you may have the Bozutto building elevations, but would have to check on them and their whereabouts, and - that you definitely did not have the Craftstar 2 over 2 architectural elevations. <p>Your suggestion to me was to obtain the elevations from the builder, Bozutto, myself."</p> <p>"This leaves me confused and frustrated, as M-NCPPC is a tax-payer funded governmental entity that is supposed to serve the County's residents and communities. It does not seem appropriate for me to be directed to contact the individual private entities, the builders, for such information."</p> <p><i>Note that copies of this email were sent to Chairman Berlage and Rose Krasnow. Two days later, Kim received a different response from Wynn.</i></p> <p>Excerpt from email to Kim:</p> <p>"Kim – we do have architecture for 212, condos and manor homes. You can make copies of the sheets you would like to here at our info desk."</p> |
| February 22, 2004 | Emails between Kim Shiley and Rose Krasnow. | <p>Email from Kim Shiley to Rose Krasnow regarding scheduling of the Threshold Hearing.</p> <p>Email from Rose to Kim conforming a date.</p> <p>(Email attached.)</p> | <p>Excerpt from Kim's email:</p> <p>"When we last spoke, you advised me that there would definitely be a hearing regarding the height issues most probably on March 3, with a slight possibility for February 24. I understand that the March agenda has been determined, yet our Threshold Hearing has still not been scheduled."</p> <p>Excerpt from Rose's email:</p> <p>"The date has now been officially set for Thursday, March 17, 2005. Official notices will be sent out on Friday, March 4th."</p> <p><i>Note: Wynn later "forgot" to send out notices and hearing was postponed until April 14, 2005.</i></p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
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| February 23-24, 2005 | Meeting with Taylor Chess, Regency Centers, Newland representatives, and CTCAC Members Letter to Taylor Chess | Meeting was held with Regency and CTCAC members to discuss plans for the retail section of the Town Center. (Letter attached.) | Excerpts from Letter: “...appreciated your time and the opportunity to express the concerns and expectations of the community based on the master plan vision.” “We were pleased to hear of Regency’s intent to create a “restaurants as entertainment” focus along the lines of the Bethesda row approach. We were equally pleased to have you confirm an intent to attract and secure tenants that would be considered “upscale” versus typical strip-mall tenants like “Jerrys Subs and Pizza”...” |
| February 24, 2005 | CTCAC Resident Update Meeting | Meeting was scheduled for February 24, 2004, cancelled due to snow conditions. | For purposes of this record, it is sufficient to state the CTCAC continued to conduct both advisory and resident update meetings from March through present. (Meeting agendas and minutes are available upon request.) |
| March 15, 2005 | Conference call with Michael Ma, Kim Shiley, and Amy Presley; and follow-up email string between Committee, Michael, and Rose | Michael called Amy (who conferenced Kim Shiley into the call) to provide more detailed information as to why the Threshold Hearing notices were not sent out in time for the March 17, 2005 schedule (i.e. Wynn “forgot”), as Kim and Amy had requested specific information on this issue. Michael also called to advise the Committee of recent set-back violations discovered and to arrange for a convenient time for hearing(s) to be rescheduled. Michael advised that they had removed the retail and west side amendment hearing from the schedule and that, due to the current situation (that it is so “controversial”) will not put it on the agenda again. Noted that he had “not received the retail plan, but until we get input from you guys we will not submit it again, especially in view of what is going on.” (Email string attached.) | Statements from phone conversation with Michael Ma: “Regarding the height violation date, I know you want to have an early date and we had an internal meeting to determine if we could move it up to April 7 th , however, we have discovered more problems. The reason I didn’t mention it last week was that we were still investigating the nature and scope of the problems. There are a number of buildings in the Town Center that violate the building setbacks (10’ from the street) and there are buildings currently near completion but no occupancy permits will be released. We have asked the developer/builders to go back to the entire subdivision and look at how many units are in violation. We understand so far that it is at least 50. We are awaiting a roadmap that shows which lots and buildings are in violation.” Based on the “Board’s desire to hear both matters simultaneously” Michael suggested that we select the April 7 th or 14 th date for the hearing. Kim and Amy agreed to the 14 th based on Amy’s schedule. |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
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| March 19, 2005 | Email response letters to Bozzuto residents; Email string regarding CTCAC History, and notification to residents | <p>Response letters from Amy Presley to Bozzuto residents who sent letters to M-NCPPC Chairman following a meeting with Clark Wagner.</p> <p>(Emails with History letter attached.)</p> | <p>It was reported to the Committee that in the meeting(s) Mr. Wagner advised the Bozzuto residents that the Committee was attempting to take a "wrecking ball" to their homes. Other comments were expressed, along the lines of the "self-appointed CTCAC" not representing all of the residents and that the CTCAC actions could damage the property value of the Bozzuto residents homes...implying that the Committee was against condo owners, etc.</p> <p>Impact was that at least two residents sent angry letters to M-NCPPC Chairman. (These letters are available as part of the Staff Report for the April 14, 2005 Hearing). The Committee response was to send response letters to the two individuals.</p> <p>Additionally, the Committee prepared and sent out (community-wide) a "History of the CTCAC" (attached) and scheduled a meeting open to all Bozzuto residents in order to answer any questions and alleviate their concerns.</p> <p>The Committee also began a systematic polling of residents (door-to-door), getting signatures of support for the CTCAC and its actions (nearly 200 signatures were obtained).</p> |
| March 25, 2004 | Letter to Catherine Matthews | Letter sent to Catherine Matthews from Amy Presley, on behalf of the CTCAC, outlining concerns regarding the Retail Center as discussed with Catherine and Nancy Hislop. | (Letter attached.) |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|----------------|------------------------------------|--|--|
| April 4, 2005 | Email to Wynn Witthans | <p>Email from Kim Shiley to Wynn Witthans confirming attempts to get Site Plan information.</p> <p>(Letter attached.)</p> | <p>Excerpts from email: "Confirming our conversation of last Friday, I inquired about site plan approvals relative to Phase I #8-98001 (due to concerns that what was actually build in the community does not align with what was submitted with that approval). You stated that, according to the Board Opinion, (and I recalled it to be item #38), all changes/approvals could be made at a staff level as an internal process."</p> <p>"I asked what was provided to you by the developer and/or builders in order to receive approval for changes and you replied, "stamped drawings." When I asked you for copies of those drawings, you stated that you would not be able to assist me with obtaining them, as you were too busy, but that I could come by and find them myself. I understand that you are busy with your work; however, I also work full time and must go out of my way to your office to obtain them."</p> <p>"Further, in order for us to support those Plans, we do require access to documents controlled by you. It is unfortunate that our requests involve your time and effort, but I am baffled by your seeming unwillingness to assist us, as you are the Staff person responsible for development review for CTC, and ultimately, a servant of the community at large."</p> <p><i>Note that Kim Shiley then went to M-NCPPC and got assistance from Rose Krasnow with obtaining "stamped drawings" and a Signature Site Plan set.</i></p> |
| April 14, 2005 | Height Violation Threshold Hearing | <p>CTCAC presented as "applicants" at this hearing.</p> <p>(Presentation and minutes of hearing on record at M-NCPPC.)</p> | <p>Board ruled "no violation" based on information provided by Staff that the buildings in question were not subject to the data table and restrictions contained on Site Plan Signature set for Phase I. Note: During the hearing, Staff admitted to clearing the files of (i.e. "throwing away") certain documents/ records.</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|----------------|---|--|--|
| April 15, 2005 | Phone call to Rose Krasnow and to Michele Rosenfeld | Phone conference with Amy Presley, Kim Shiley and Rose Krasnow, and with Michele Rosenfeld. | <p>Based on information realized at the hearing the day prior, Amy and Kim called to Rose to express suspicions of wrongdoing by Staff and to express the Committees uneasiness regarding processes within M-NCPPC. Based on certain Staff admission during the hearing, such as having "cleared" files (resulting in loss of pertinent documentation), Amy Presley requested that Rose remove all files from Wynn's office and transfer them to the legal department, where they could be held while the Committee was enabled to thoroughly review documents and obtain information it was seeking. Rose agreed to this request and later returned the call to advise Amy that the files had been moved.</p> <p>Rose transferred call to Michele Rosenfeld. Michele could not confirm that all documents pertaining to CTC were now in the possession of the legal department. Neither would she agree to provide a statement that she could not do so. She did agree that she would provide a listing of any supplemental documents, including the location from which they were retrieved, on Monday (April 18).</p> |
| April 17, 2005 | Follow-up email to Rose Krasnow / cc to Michele Rosenfeld | <p>Email was sent by Amy Presley to Rose Krasnow to confirm information discussed on Friday, April 17, 2005. Copies were sent to Michele Rosenfeld, Catherine Matthew and Councilman Mike Knapp.</p> <p>(Letter attached.)</p> | <p>Excerpts from email:</p> <p>"As stated by you, and confirmed with Michele Rosenfeld, your office was unable on Friday to confirm to us whether or not the documents retrieved from Development Review represented all documents on file pertaining to Clarksburg Town Center or, specifically, to the amendments A-E for Site Plan #8-98001. We were advised that you had retrieved all available documents from Ms. Witthans office, but that you could not guarantee that there were not other existing documents in other locations."</p> <p>"... especially in view of our concern regarding the potential for documents to be misplaced or even "thrown away" by staff..."</p> <p>"...we will receive from the legal department..specific listing of any subsequent files or documents found.."</p> |

Clarksburg Town Center Development – History of CTCAC Actions

| Date | Action | Action Detail | Comments |
|----------------|--|--|--|
| April 19, 2005 | Email to Catherine Matthews | Letter from Amy Presley to Catherine Matthews detailing serious concern over recent hearing and overall issues with M-NCPPC. | (Letter attached.) |
| April 21, 2005 | Meeting with Michael Ma and Confirmation Email to Michael Ma | Amy Presley and Kim Shiley met with Michael Ma to request information and discuss concerns. Email sent to Michael Ma from Amy Presley confirming meeting, discussions and requests. (Email attached.) | As of this date, no response was received from Rose Krasnow or Michele Rosenfeld. Excerpts from email: "We wanted to confirm with you our conversation and our requests for the following: - Letter from your legal department stating what additional CTC documents, if any, have been retrieved and from what locations since last Friday.. - Letter detailing the status of the setback hearing that was initially scheduled for 4/14/05 and then was removed from the agenda. We want to know specifically any and all actions taken by Staff (or any that may have been taken by the Department of Permitting Services – if M-NCPPC is aware of such) since the time you initially notified us of the hearing. We want to know whether actions have been taken to waive the setback requirement to enable occupancy of the 2/2's which had initially been denied occupancy permits. We would also like to know the status on other buildings in violation of the setback requirement (as you discussed with us several weeks ago when you advised us that the developer and builders had come forward to acknowledge multiple other violations to setbacks in addition to the 2/2's which were denied occupancy." |
| April 22, 2005 | Request for Reconsideration | Request for Reconsideration sent to Chairman Derick Berlage. | (Reconsideration request attached.) |
| April 26, 2005 | Email to Marlene Michaelson | Email to Marlene Michaelson (at the suggestion of Mike Knapp). | (Email attached.) |
| April 27, 2005 | Supplement to Request for Reconsideration | Supplemental information sent to Chairman for consideration. | (Email attached.) |
| April 27, 2005 | Email to Marlene Michaelson | Email to Marlene Michaelson to provide supplemental information as sent to Derick Berlage. | (Email attached.) |

PLEASE COME

A meeting was held July 27 by Newland Communities to present the plan for the Retail Section of the Clarksburg Town Center. This meeting was well attended by the community and opposition to the plan was overwhelming. Newland Communities has stated that they "want to work with the community" and they "got the message that people are unhappy".

You are invited to attend a meeting where we will collectively gather ideas and suggestions as well as voice our concerns with regards to the design of the retail portion of the Town Center. This meeting will only be open to the people who live in the Clarksburg Town Center community.

We will address the following:

- ❑ The master plan for Clarksburg Town Center and the fundamental rules of a traditional neighborhood.
- ❑ The Clarksburg Town Center special district tax
- ❑ Restoring the size of the retail/office space to allow for more professional services (medical/dental offices), restaurants and quality retail services.
- ❑ Removing the two four story multi-family dwelling units.
- ❑ Redesigning the big box, strip mall design that was presented.
- ❑ Creating the pedestrian friendly, neo traditional retail town center as originally promised and marketed.

The meeting will be held Wednesday, August 4, 2004 at 7:00 p.m. at the Hyattstown Fire Department located at 25801 Frederick Road (Rt. 355), 2nd Floor.

Directions: North on Rt. 355 (Frederick Road) to the intersection of Hyattstown Mill Rd. The firehouse is on the right. Enter 2nd floor from outside stairs on the backside of the fire station.

PREPARED JULY 29
FOR AUGUST 4 MEETING.

Clarksburg Town Center (CTC) Advisory Committee
August 4, 2004
Minutes of Meeting

A meeting of concerned residents/citizens was held to discuss Newland Communities proposal to alter the original design of the Town Center retail section as reflected in the Master Plan. The meeting was opened by Kim Shiley and Carol Smith who solicited volunteers to form an Advisory Committee.

The following points were shared:

- We believe Regency Centers now owns the retail center land.
- A plan for a strip mall including a large parking lot and condominiums has been submitted to the Park and Planning Commission. This plan does not reflect the pedestrian/community-friendly Town Center contained in the original Master Plan nor does it reflect the main street concept of earlier plans.
- Many residents voiced their opposition to the change – stating that they were under the impression when they purchased their homes that a Town Center was to be the focal point of the community and the hub of Clarksburg.
- Wynn Witthans of the Park and Planning Committee has voiced concerns about the revised plans and has indicated a desire to work cooperatively with our Advisory Committee.
- Newland Communities has indicated a willingness to work with residents.
- Regency prefers working with Giant. We believe Giant dictates the design of the retail area.
- Harris Teeter has stated they are flexible and adaptable with designing an area to meet the consumer's needs/interests.
- It is unclear whether either Safeway or Harris Teeter was ever approached to be the anchor store.
- The issue regarding the liability of Newland to adhere to the design of the master plan was discussed. An attorney and community resident stated that the community might have an option under the Consumer Protection Act and that we the community might have the right to sue Newland Communities if it can be proven that they misrepresented their intentions in their advertisements.
- It was suggested that residents hold on to all documents that were provided/collected when they purchased their homes. Barbara Geshwind has volunteered to collect this information. Her contact information is 301-916-2412 waveleteer@aol.com.
- Newland Communities has stated that the Master Plan was offered as a guide and that it is subject to change.

ACTIONS:

- An Advisory Committee was formed in an attempt for residents to join forces, to share talents and resources, and to conduct research and formulate a cohesive plan.

of action to advise Newland Communities to follow through with the original design of the retail center.

- The CTC Advisory Committee will meet weekly beginning Wednesday, August 11, 2004, at 7:30 p.m. at the Hyattstown Fire Station.
- The following residents have volunteered and were selected to be members of the CTC Advisory Committee:

Jeff Lunenfeld
Amy Presley
Susan Frimond
Dennis Learner
Ken Bullough
Niren Nagda
Jerry and Regie Barbour
Randy DeFrehn
Lynn Fantle
Jen Jackman
Carol Smith
Kim Shiley
Carolyn McAllister
Tim DeArros
Joel Richardson *
Mark Murphy *

- In addition, two subcommittees were formed to conduct research and to design a petition and a survey.
- The following residents have volunteered and selected to be members of the subcommittee: Charlotte Fedders, Karen Beauregard, Brett Reilly, Jacquelyn Polder and Carol Smith.
- A meeting has been scheduled for the Advisory Committee to meet with representatives from Newland Communities, Regency Centers and separately with Wynn Witthans of the Park and Planning Commission. The meeting with the developers will take place in the later part of the week of August 23.

Carolyn McAllister
Revised - 8/12/04

* INADVERTENTLY LEFT OFF OF LIST BY CAROLYN
(EXPRESSED DESIRE TO BE ON COMMITTEE, BUT
NOT CONFIRMED UNTIL 8/11/04 MEETING.)

Su **Clarksburg Town Center**
Da 7/28/2004 12:32:21 PM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Rmsjohnson@hotmail.com, Damonsteele@comcast.net, Synergiesinc@aol.com, Susan@mris.Jersub13@yahoo.com, Rdefrehn@nccmp.org, Shanagan@comcast.net, L-jhunt@mindspring.c, Jjackman@wtplaw.com, Cariandieff@comcast.net, Glanyard@comcast.net, Amcwil228@aol.cc
CC shileyk@mail.nih.gov
Sent from the Internet (Details)

Hi

I am compiling a list of people from the meeting last night who are interested in forming an alliance to make sure Newland Communities builds a retail center that follows the concept that was presented to us when each of us bought into the Clarksburg Town Center. We have a financial interest in this as well as the developers. If you are interested in keeping informed or joining the committee to represent the community please email me with your name, address, email address and phone numbers. We will need to collect our concerns, ideas and suggestions in order to present them to the County Planning Board, Newland Communities and Regency Centers.

Speak to your neighbors. There were many people there last night who did not get the chance to sign up. A strong showing of support from our community is needed.

Carol Smith
Kimberly Shiley

Su **Meetings: 8/8 and 8/11**
Da 8/7/2004 9:37:18 AM Eastern Daylight Time
Frc carolmca@yahoo.com
To barbourjr@att.net, kbullough@mosiactileco.com, rdefrehn@nccmp.org, lfantle@aol.com,
susan@mris.com, jjackman@wtplaw.com, dennis@dlearner.com, cariandjeff@comcast.net,
nnagda@energenconsulting.com, synergiesinc@aol.com, shileyk@mail.nih.gov,
smithcar@mail.nih.gov

Sent from the Internet (Details)

Hi to all! I have assumed the responsibility of taking the minutes for the Advisory Committee. My name is Carolyn McAllister (I was present at the meeting this past Wednesday - collecting everyone's names and emails). I am a special educator with MCPS.

Kim has called an urgent meeting to be conducted on 8/8 at 4:00 p.m. (this to be in addition to the one scheduled for Wednesday, 8/11). Kim will host the meeting in her house:

13021 Ebenezer Chapel (Kim: I don't have your home phone number to include for the RSVPs)

The purpose of this meeting is to review the staff report that has been already approved by the Parks and Planning Commission. Please accept our apologies for the short notice, and please try to attend.

A second meeting has been scheduled as a follow-up to this past Wednesday's meeting. This meeting will be on 8/11 @7:30 p.m. at the Hyattstown Fire House.

Thanks in advance to all for your cooperation and support.

Carolyn A. McAllister
12819 Clarks Crossing Drive
240-235-4175

Su **RE: Petition**
Da 8/10/2004 7:56:13 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com
Sent from the Internet ([Details](#))

thanks amy,

i will forward to all today; looks good to me

we are scheduled to meet with nellie at 1000; have you been able to get in touch with john carter? would you like to go with us and perhaps speak with him and i'm sure we can use your help in digging through materials with nellie?? i also want to track down approved zoning for Falls Grove and Trivella (sp?) and see if they are in the optional development method like us.

thank you too for your changes to the petition...your language flows much better.

kim

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]
Sent: Monday, August 09, 2004 6:55 PM
To: Shiley, Kimberly (NIH/NCI)
Subject: Re: Petition

Hello, Kim.

I have attached the draft agenda for your review and comment. Please make any changes you see fit and send when you are ready.

Thanks much,
Amy

ps Let me know if you need or would like my assistance at your Wednesday Parks and Planning meeting or in the interim.

Su **RE: Petition**
Da 8/10/2004 10:35:04 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com
Sent from the Internet ([Details](#))

hi amy,

yes, i was thinking it would be helpful for you to plan to come. i also forward email from jen to you as we will need to look for specifics

kim

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]
Sent: Tuesday, August 10, 2004 9:51 AM
To: Shiley, Kimberly (NIH/NCI)
Subject: Re: Petition

Hi, Kim.

Haven't had the chance to talk with John Carter, but planned on doing so today. Perhaps it would be better though to join you all and get him in person? Let me know what you think. I can either call today and request his time tomorrow....or surprise him. As for timing and digging through papers, happy to oblige!

Amy

Su **FW: Petition**
Da 8/10/2004 10:36:41 AM Eastern Daylight Time
Fr shileyk@mail.nih.gov
To Synergiesinc@aol.com
CC jjackman@wtplaw.com
Sent from the Internet ([Details](#))

adding amy to this string,

-----Original Message-----

From: Jackman, Jennifer S. [mailto:JJackman@wtplaw.com]
Sent: Tuesday, August 10, 2004 9:01 AM
To: Shiley, Kimberly (NIH/NCI)
Subject: RE: Petition

Do you want to call me? (202) 659-6794

-----Original Message-----

From: Shiley, Kimberly (NIH/NCI) [mailto:shileyk@mail.nih.gov]
Sent: Tuesday, August 10, 2004 8:55 AM
To: Jackman, Jennifer S.
Subject: RE: Petition

newland and P&P are expecting that we will be meeting with all parties the week of the 23rd; in fact the 26th is at the request of wynn withhans. however, the folks that met on sunday felt that perhaps at this point we should only meet with newland. why is it that the land lawyer feels it's a good idea to meet with P&P on the 26th too? we have some concerns about alliances at this point. i can give you specifics later kim

-----Original Message-----

From: Jackman, Jennifer S. [mailto:JJackman@wtplaw.com]
Sent: Tuesday, August 10, 2004 8:04 AM
To: Shiley, Kimberly (NIH/NCI)
Subject: RE: Petition

Great. Unfortunately I have a meeting in DC at 11. Try to find out the exact application that has been filed. (ie., change to master plan, subdivision plan, etc.) Depending on what you find out, we may need to change the draft letter accordingly.

Also, when I spoke with this land use lawyer, he thought it could be a good thing to have park and planning attend the Aug 26 meeting. However, I don't know if we should change our minds now - - maybe we can have them at the next meeting, assuming there is one.

-----Original Message-----

From: Shiley, Kimberly (NIH/NCI) [mailto:shileyk@mail.nih.gov]
Sent: Tuesday, August 10, 2004 8:01 AM
To: Jackman, Jennifer S.
Subject: RE: Petition

hi jen

a few of us are going to park and planning tomorrow. i will determine the exact application while there...thanks for asking in this manner (i know it's important). i will email you tomorrow afternoon with the info. we are meeting at P&P at 1000. kim

-----Original Message-----

From: Jackman, Jennifer S. [mailto:JJackman@wtplaw.com]

Sent: Tuesday, August 10, 2004 7:47 AM

To: Shiley, Kimberly (NIH/NCI)

Subject: RE: Petition

Kim:

I spoke with a reputable land use attorney yesterday to get some feedback and a general idea of what to expect in this process. Can you tell me what the application is for that was just submitted? I need the exact wording because they are terms of art and each different application carries a different process with different procedures. The draft letter refers to a change to the Master Plan. Is that the exact application?

Thanks

Su **Wednesday**
Da 8/10/2004 11:08:55 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com
CC shileyk@mail.nih.gov
Sent from the Internet ([Details](#))

Hi Amy

I just got off the phone with Kim. She said you want to go to Park and Planning with us tomorrow. That's great. I am going to pick Kim up at 7:30 and we are going to grab some breakfast and work on what we need to accomplish at the meeting Wed. night. Do you think you can come with us or is that too early? We can work around your schedule too but have to be at Park and Planning by 10:00. We both took the day off.

I also just spoke with Doug Duncan's office again. I'll tell you all about it tomorrow but the good news is that Nellie at Park and Planning's boss Sue Edwards is now involved. She is the person in charge of planning for the entire I270 corridor. She told Newland the plan would not be submitted even in September. She will also be at the meeting on the 26th with Newland, Regency, our group and Nancy Hislop from Duncan's office.

I also spoke with the Clarksburg Historic Society yesterday. We have alot of friends.

*Carol Leigh Smith
EFDB/NCI/NIH
301-435-5215*

Su **RE: Wednesday**
Da 8/10/2004 11:15:04 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com
Sent from the Internet ([Details](#))

Don't mind? We want you to. That's great. I can pick you up too.

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]

Sent: Tuesday, August 10, 2004 11:12 AM

To: Smith, Carol Leigh (NIH/NCI)

Subject: Re: Wednesday

Wow...excellent news all around. I would be happy to join you for breakfast and discussion pre-meeting. If you don't mind my joining you, I can meet you both at Kim's at 7:30.

Thanks,

Su **RE: Petition**
Da 8/10/2004 11:38:55 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com
CC smithc@efdb.nci.nih.gov, jjackman@wtplaw.com
Sent from the Internet (Details)

greetings,

just spoke to carol

she just spoke to Nancy Hislip, rep for Clarksburg with Doug Duncan's office. The are very much aware of what is going on and have spoken to Newland. Nancy plans on being at the meeting on the 26th and so is Sue Edwards from Park and Planning (she is in charge of the I270 plans). Sue has told Newland that they will not be able to submit anything to P&P in September as previously planned. It sounds as if we have a lot of support for our concerns.

amy, could you meet carol and me for breakfast at 0730 before going to P&P? i think we'll probably try to talk with Sue Edwards tomorrow too.

kim

Su **RE: Petition**
Da 8/10/2004 11:45:27 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com
Sent from the Internet (Details)

i just realized that carol had asked and everything is in place.

see you tomorrow

;))

Su **Re: Petition**
Da 8/10/2004 4:25:41 PM Eastern Daylight Time
Frc lfantle
To smithc@efdb.nci.nih.gov, shileyk@mail.nih.gov, carolmca@yahoo.com, barbourjr@att.net,
kbullough@mosiactileco.com, rdefrehn@nccmp.org, susan@mrisc.com, jjackman@wtplaw.com,
dennis@dlearner.com, cariandieff@comcast.net, nnagda@energenconsulting.com, Synergiesinc
File petitionwithchanges3.rtf (6537 bytes) DL Time (TCP/IP): < 1 minute

Hi everyone,

The petition looks great. I agree we should send from the group.

I propose a few minor edits, in blue.

Lynn Fantel

CLARKSBURG TOWN CENTER
ADVISORY COMMITTEE MEETING AGENDA

Date: August 11, 2004

Location: Hyattstown Fire House

Time: 7:30pm

Agenda:

- Update on current status
 - Review of communications with Newland (post 7/27 meeting)
 - Review of 8/4 advisory member meeting notes
 - Confirmation of anticipated meeting date(s) – Newland / Park & Planning Commission
- Review of Town Center Plan materials gathered by Kim/Carol
 - Overview of information gathered/sources
 - Brief discussion on variations in plans from 1995 to 1997 and 2002
 - Brief discussion on implications of changes
 - Brief discussion on Day Care Center/Reduction of green space
- Meeting Planning
 - Determine objectives for Newland meeting
 - Agree on outline for meeting presentation
 - Determine next steps and action items for presentation preparation
- Review and final approval of petition letter
 - Determine action for gathering signatures
- “Vote-in”/Confirm Kim and Carol as Co-Chairs for the Advisory Committee

Clarksburg Town Center (CTC) Advisory Committee
August 11, 2004
Minutes of Meeting

The CTC Advisory Committee held their first "official" meeting on 8/11/04.

The following Committee members and residents were in attendance: Jeff Lunenfeld, Amy Presley, Susan Frimond, Dennis Learner, Ken Bullough, Niren and Jaya Nagda, Jerry and Regie Barbour, Randy DeFrehn, Lynn Fantle, Jen Jackman, Carol Smith, Kim Shiley, Carolyn McAllister, Tim DeArros, Tricia Larade, Frank and Rachel Johnson, Joel Richardson, and Mark Murphy.

The meeting was opened by Kim Shiley, who presented the original (and approved) Master Plan and Project Plan architectural drawings of the Town Center. The Site Plan drawing was also discussed, and it appears that it might have been approved with slight changes to the recreational area near the Town Center.

Amy Presley provided a summary of the meeting she, Carol Smith, and Kim Shiley attended with John Carter of the Montgomery County Parks and Planning Department – who is Chief, Community Based Planning Division, M-NCPPC and was involved with the plan from concept. Mr. Carter told our CTC Advisory Committee reps that Newland Communities' altered Site Plan was not in compliance with either the Master Plan or the Project Plan. Mr. Carter further indicated that in the event that the revised Site Plan has been approved already, "it can be overturned."

Mr. Carter offered his full support and stated he would be willing to attend the meeting with Newland Communities on 8/26/04.

Discussions:

- The original Project Plan was approved by Parks & Planning March 26, 1996, with only three waivers:
 1. easements
 2. additional on-street parking
 3. reduce setbacks/boundary lines
- The Statute of Ordinance requires developers to stick with the Master Plan (the conditions outlined within the Project specifically state that the development must align with the Master Plan).
- The Zoning Code Book was reviewed, and it supports the Master Plan.
- Bozzutto's completed buildings might be in violation of the measurement stipulation.
- The Data Summary (p. 23) was reviewed. It was determined that two different Data Summary sheets existed (variances from the 1995 Project Plan submission and sometime thereafter). Variances were specifically in regard to the commercial and residential height limits (4 levels, vs. 3 levels for residential on the 1996 Data Summary). It is unclear at this point which Data Summary is the accurate one.

Su **guess who called?**
Da 8/12/2004 10:57:57 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To smithc@efdb.nci.nih.gov, synergiesinc@aol.com, jjackman@wtplaw.com
File **petition.DOC** (25600 bytes) DL Time (TCP/IP): < 1 minute
Sent from the Internet ([Details](#))

good morning,

gary has called bright and early (0930)... i told him i was unable to talk at the moment, could i please call him back? he said just to called kim ambrose. the firehouse is available on the 26th. i've been looking over the site plan review of 1998 regarding phase 1....wynn was the staff planner. she recommends adjustment to the Project plan. one in particular is replacing 1/2 of the multifamily units with 2/2 units. We should look at this more closely too, i feel.

please look over the Petition and let me know what next.

thanks kim <<petition.DOC>>

Su **Meeting**
Da 8/12/2004 12:46:55 PM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To shileyk@mail.nih.gov, Synergiesinc@aol.com
File **Meeting** (3096 bytes) DL Time (TCP/IP): < 1 minute
Sent from the Internet ([Details](#))

Excellent job last night ladies. I feel like we accomplished alot. What I was impressed with was how confident the group was in our abilities to be the "front men" They are all so supportive...well almost. I think we might have one trouble spot but we can handle Dennis. Can you both receive excel spreadsheets? I attached the latest list of names for your reference. I can't find the list that identified the original 14 selected to be the committee. Do you have it Kim? I have the sign in sheet from last night but there are extra people on that list.

Carol Leigh Smith
EFDB/NCI/NIH
301-435-5215

Su **petition & presentation**
Da 8/12/2004 12:55:03 PM Eastern Daylight Time
Fr smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com, shileyk@mail.nih.gov
CC jjackman@wtplaw.com, jersub13@yahoo.com
Sent from the Internet (Details)

Hi All

I think we can get alot done via email to prepare for the presentation. I think it is safe to say that from the meeting last night we can break down to the smaller group appointed to speak including Jenn and Joel and get the information down that we discussed last night. Let's work on getting our points clear on a document. We can turn that into a powerpoint presentation or an agenda or just notes if we like. We can then submit that to the 14 on the committee for review.

What do you think?

Carol

I also made a suggestion on the petition and gave that to Kim. I think we need to mention that the size of the retail was reduced to 46.8% of the proposed possible retail/office space. It can fit in with the sentence about the retail parcel being moved and where it goes on to mention the size of the 58,000 sq. ft. grocery store.

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]
Sent: Thursday, August 12, 2004 12:44 PM
To: Shiley, Kimberly (NIH/NCI)
Cc: Smith, Carol Leigh (NIH/NCI); jjackman@wtplaw.com
Subject: Re: guess who called?

laughing about the Gary call..

Attached are my revisions (in red) to the Petition. I think it's a good letter and about as concise as we can make it. I say "cut it, print it"?

Have a few major project issues of my own to get through today, but plan to begin on the "presentation" outline tomorrow. In the interim, let me know if there is anything else that I can do.

Should we schedule a meeting to pre-review the presentation? Maybe Tues/Wed next week?

Best,
Amy

Su **RE: guess who called?**
Da 8/12/2004 1:26:45 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com
Sent from the Internet (Details)

Ok, I'll incorporate those changes.

I didn't jot down the points/dialogue I am to present to kim ambrose last night. Could I run through those with you, amy, before I call her? I will call P&P right now to find out what time of evening is best for them (hopefully 1700 that's 5pm).

Thanks,
Kim

Su **RE: guess who called?**
Da 8/12/2004 1:51:33 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com
CC smithc@efdb.nci.nih.gov, ijackman@wtplaw.com
Sent from the Internet (Details)

Okay, I've made all revisions provided. One last read through, please. Carol, please forward to Joel I have next Tues off from work, so I can be available anytime.

Many, many, many thanks again to you all for being great neighbors and friends ☺
kim

Su **RE: petition & presentation**
Da 8/12/2004 2:01:13 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To smithc@efdb.nci.nih.gov, Synergiesinc@aol.com
CC ijackman@wtplaw.com, iersub13@yahoo.com
Sent from the Internet (Details)

Jeff Lunenfeld, Amy Presley, Susan Frimond, Dennis Learner, Ken Bullough, Niren and Jaya Nadga, Jerry and Regie Barbour, Randy DeFrehn, Lynn Fantle, Jennifer Jackman, Carol Smith, Kim Shiley, Carolyn McAllister, Tim DeArros

New ones last night: Mark Murphy and Joel Richardson (?) and I think Jeff's wife, Cari was there
So, that's 19 total

Su **RE: guess who called?**
Da 8/12/2004 2:02:49 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To shileyk@mail.nih.gov, Synergiesinc@aol.com
CC smithc@efdb.nci.nih.gov, ijackman@wtplaw.com
Fil **petition.DOC** (30720 bytes) DL Time (TCP/IP): < 1 minute
Sent from the Internet (Details)

Okay, here's the attachment (sorry)

(Sent August 16, 2004)

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board 8787
Georgia Avenue Silver Spring,
Maryland 20910

Re: Proposed Changes to Project Plan for Clarksburg Town Center

Dear Mr. Berlage:

As Co-Chairs of the Clarksburg Town Center (CTC) Advisory Committee, we are writing as the collective voice of the community to express our strong opposition to the deviations (as contained within the Site Plan proposed by the developer, Newland Communities) from the approved Project Plan #9-94004. These deviations concern the commercial and other sections of the development as reflected in the Site Plan presented by Newland Communities during the July 27, 2004 meeting with CTC residents.

As proposed by the original applicants, Clarksburg Town Center Venture, and approved by the Planning Board, Clarksburg Town Center is a neo-traditional community reflecting the "New Urbanism" school of community planning and design. Accordingly, it is designed and intended to provide a unique pedestrian-oriented neighborhood that allows residents to walk to the recreational, retail, civic and other facilities dictated in the Master and Project Plans previously approved by the Board. Specifically, the Town Square was designed and intended to serve as the focus of public life, with retail and commercial establishments located on the East side of the development's Main Street and Town Square. The Master Plan also gave careful consideration to protecting the character of Clarksburg's Historical District, the Gateway to the Town Square.

Clarksburg Town Center is in the RMX-2 Zone, which allows for both "standard" and "optional" methods of development. Under the "standard" method, office and retail uses are not allowed at all. Accordingly, the developer submitted and the Board approved an "optional" method of development that allowed for high-density residential units mixed with commercial uses if in accordance with the guidelines of the Master Plan, and that explicitly required certain public amenities and facilities. It appears that the developer thus could not have gotten approval for this high-density residential project without including in its application the community-oriented and pedestrian-friendly plans for the Town Center's retail and commercial development that the Commission ultimately approved.

Newland Communities (who purchased the development from Terrabrook late last year) is now proposing a radical change to the retail and commercial areas of the Town Center. Under this proposal, the retail and commercial establishments to be located along Main Street and the Town Square will be replaced with four-story condominium buildings and other multi-family residential units, thus increasing the residential density of what is already a high-density development. The retail and office square footage has been reduced by 53.2% of the approved square footage and the proposed plan consists of a huge square parking lot bordered by a 58,800-square foot grocery superstore (reportedly Giant) with retail establishments adjoining on each side, a proposed drive-thru bank, one freestanding restaurant and a combination office/retail building located along the south side of the parking lot.

Although its configuration is in the shape of a square, Newland Communities' proposed change is the very antithesis of the "Town Square" concept that is a defining characteristic of neo-traditional communities, and that was at the heart of the Clarksburg Town Center plan that the Board approved. It simply replaces the pedestrian-friendly, community-oriented Town Center concept with a regional strip mall, but with one important difference—Newland Communities' proposed regional strip mall will be located in the heart of a high-density residential community. Indeed, one of the two principal

thoroughfares for automobile ingress to and egress from the shopping center will be through and/or adjacent to the Town Square, departing even further from the pedestrian-friendly approach that both the Master and Project Plans define as the main characteristic of Clarksburg Town Center.

As you can well imagine, Newland Communities' proposal is inconsistent with the Planning Board's Master Plan and subsequent Project Plan and is not reflective of the community marketed by the builders of CTC nor is it in keeping with the concept that was solicited at the Visitor's Center when my neighbors and I were making our decisions to purchase homes in Clarksburg Town Center. Many others in the vicinity of CTC are opposed to Newland Communities' proposed changes as well. At the July 27, 2004 meeting with Newland Communities to discuss their proposal, the room was filled to capacity with concerned Clarksburg residents from the Town Center and from the general community, while additional concerned residents stood in the hall. The following week, a meeting held by residents of CTC regarding the same issue attracted over 100 residents and the CTC Advisory Committee was established to address these issues. The Clarksburg Civic Association, which has been instrumental in the planning and implementation process for Clarksburg Town Center for over a decade is also opposed to Newland Communities' deviation from the Project and Master Plans.

Based on these issues, we respectfully request that the Board not approve Newland Communities' proposed site plan, and require Newland Communities to abide by the original terms of the Project Plan. We would ask that the Board not take any action on the proposed site plan, requests for amendments, or requests for zoning variances pertaining to a reduction in the RDT Zones until it has studied the proposal thoroughly and received the input of the residents of the Clarksburg Town Center, the Clarksburg Civic Association and all other interested parties. Thank you for your consideration.

Sincerely,

Kimberly A. Shiley
Co-chair, CTC Advisory Committee

Carol L. Smith
Co-chair, CTC Advisory Committee

cc: Sue Edwards, Team Leader I270 Corridor Area, M-NCPPC
John Carter, Chief, Community Based Planning Division, M-NCPPC
Wynn Witthans, Development Review, Planning Department, M-NCPPC
Clarksburg Civic Association
Clarksburg Historical Society
Doug Duncan, County Executive, Montgomery County
Kathy Matthews, Director of Upcounty Regional Services
Nancy Hislop, Assistant Director of Upcounty Regional Services
Mike Knapp, County Council, Montgomery County
Brian Long, Aide to Council Member Mike Knapp
Kimberly Ambrose, Vice President of Operations, Newland Communities
Taylor Chess, Vice President Investments, Regency Centers
Susan Singer-Bart, The Gazette

Sent: Monday, August 16, 2004 6:34 PM

To: shileyk@mail.nih.gov

Cc: smithc@efdb.nci.nih.gov; nnagde@ENERGENconsulting.com; murfs@comcast.net; barbourjr@att.net; bull30@comcast.net; timdearros@comcast.net; rdefrehn@nccmp.org; Lfantle@aol.com; susan@mriss.com; jjackman@wtplaw.com; dennis@dlearner.com; carandjeff1@comcast.net; carolmca@yahoo.com; jersub13@yahoo.com

Subject: 8-26 Meeting Agenda

Hi, Kim and all -

Attached is the draft of the meeting agenda for next week. As Kim mentioned prior, it is important to keep this simple, without deviating from our two key points (i.e. compliance with master plan/project plan requirements; compliance with "New Urban Development" concept as marketed and sold). I will put together our few "presentation" sheets tomorrow, but will keep them simple as merely a support of the topics outlined in the agenda. I intend to include main points regarding compliance and certain quotes pulled from our key supporting documents.

I believe we have plenty of material and a very strong position going into this. My expectation is that we make a very strong and clean presentation to them; support our views during their argumentation (using material from our paperwork arsenal!); and end the meeting with agreement as to action items -- i.e. require them to re-submit revised proposal(s) in keeping with the master/project plans. (If we are pushed to describe what we do want, we also have the benefit of the Brett Reilly slide show!)

All agreed? Or alternate suggestions? Comments welcome.

Thanks,
Amy

Su **RE: 8-26 Meeting Agenda**

Da 8/17/2004 8:24:41 AM Eastern Daylight Time

Frc smithc@efdb.nci.nih.gov

To Synergiesinc@aol.com, shileyk@mail.nih.gov

CC nnagde@ENERGENconsulting.com, murfs@comcast.net, barbourjr@att.net, bull30@comcast.net, timdearros@comcast.net, rdefrehn@nccmp.org, Lfantle@aol.com, susan@mriss.com, jjackman@wtplaw.com, dennis@dlearner.com, carandjeff1@comcast.net, carolmca@yahoo.com, jersub13@yahoo.com

Sent from the Internet ([Details](#))

Hi Everyone

If you have any information with marketing that supports our claim that we were told the town center would be neotraditional and would have the look/feel of Kentlands or another town center retail area, please let Amy, Kim or I know. We have collected newspaper articles, handout information from the visitor center and builders, newsletters from Terrabrook, etc. that support our claim that the town center was going to look very different than what we saw in Newlands presentation on July 27.

Thanks
Carol

Su **Petition**
Da 8/17/2004 8:50:24 AM Eastern Daylight Time
Fr smithc@efdb.nci.nih.gov
To Josh.Bokee@montgomerycountymd.gov
CC shileyk@mail.nih.gov, Synergiesinc@aol.com
File **petition.doc** (83456 bytes) DL Time (TCP/IP): < 1 minute
Sent from the Internet ([Details](#))

Hi Josh

Attached is the letter that was mailed yesterday to the Chair, Vice Chair and three commissioners at the Department of Park & Planning. There are a number of people that were copied on this letter at the bottom including Mike Knapp and Brian Long. The letter was written by the Clarksburg Town Center Advisory Committee, a group formed out of the 100 plus people and growing who have continued to support our effort to see the Clarksburg Town Center developed as was designed in the Master Plan and Project Plan.

We appreciate that you will be attending the meeting on August 26 at 5:00 at the Hyattstown Fire Dept. We look forward to working with Newland Communities to see the Clarksburg Town Center become the community we invested in.

Carol Leigh Smith
301-435-5215

Su **Clarksburg Town Center**
Da 8/17/2004 9:08:03 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To catherine.matthews@montgomerycountymd.gov, nancy.hislop@montgomerycountymd.gov
CC Synergiesinc@aol.com, shileyk@mail.nih.gov
Sent from the Internet ([Details](#))

Hi Catherine and Nancy,

First let me apologize Catherine for misspelling your name in a letter that was sent to the Department of Park and Planning yesterday objecting to the changes to the master plan for the Clarksburg Town Center. You were copied and should receive the letter this week. The cc at the bottom has your name spelled with a K instead of a C. The letter was written by the Clarksburg Town Center Advisory Committee, a group formed out of the 100 plus people and growing who have continued to support our effort to see the Clarksburg Town Center developed as was designed in the Master Plan and Project Plan.

We wanted to make sure you know the date and time of the meeting with Newland Communities and the Clarksburg Town Center Advisory Committee. The meeting will be held on August 26, 2004 at 5:00 at the Hyattstown Fire Dept on Rt. 355. We look forward to working with Newland Communities to see the Clarksburg Town Center become the community we invested in. We hope you can attend.

Carol Leigh Smith
301-435-5215

Su **RE: Clarksburg Town Center**
Da 8/17/2004 9:38:33 AM Eastern Daylight Time
Frc Catherine.Matthews@montgomerycountymd.gov
To smithc@efdb.nci.nih.gov
CC Synergiesinc@aol.com, shileyk@mail.nih.gov, Nancy.Hislop@montgomerycountymd.gov

Sent from the Internet (Details)

Carol,

Thank you for keeping me informed. Although I have not yet seen all of the changes proposed nor discussed them with our planning staff, I do hope that the original theme of the town center is maintained; one that promotes safe pedestrian activity, retail, eateries, the public library, park space, etc. I plan to see you at the August 26th meeting.

Catherine Matthews

Director

Upcounty Regional Services Center
12900 Middlebrook Road, Suite 1000
Germantown MD 20874

240-777-8000 /240-777-8002 TDD

NEW catherine.matthews@montgomerycountymd.gov

...bringing the County closer to you!

Su **RE: Clarksburg Town Center**
Da 8/17/2004 9:43:29 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Catherine.Matthews@montgomerycountymd.gov
CC Synergiesinc@aol.com, shileyk@mail.nih.gov

Sent from the Internet (Details)

I look forward to meeting you. Our community is strong and I am proud to be living in the Clarksburg Town Center with so many wonderful neighbors. It is amazing how involved my neighbors have become with organizing a committee to make sure the original theme of the town center as you stated is maintained. It is our goal.

See you on the 26th

Carol Smith

Su **RE: Clarksburg Town Center**
Da 8/17/2004 9:44:19 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Nancy.Hislop@montgomerycountymd.gov
CC Synergiesinc@aol.com, shileyk@mail.nih.gov

Sent from the Internet (Details)

Nancy,

Our committee looks forward to meeting you as well. Thank you in advance for attending.

Carol

-----Original Message-----

From: Hislop, Nancy [<mailto:Nancy.Hislop@montgomerycountymd.gov>]

Sent: Tuesday, August 17, 2004 9:40 AM

To: Smith, Carol Leigh (NIH/NCI)

Subject: RE: Clarksburg Town Center

Carol:

Both Catherine and I plan to attend the meeting. There will also be representatives from the Department of Public Libraries and, of course, Park and Planning. I look forward to meeting you next week.

Regards,
Nancy Hislop

Su **names**
Da 8/24/2004 5:35:22 PM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To synergiesinc@aol.com, shileyk@mail.nih.gov, iersub13@yahoo.com, JJackman@wtplaw.com
Sent from the Internet (Details)

Hi

I just added about 60 more names to the list from the Montgomery County Tax Records. I put their names on the spreadsheet in blue until we can contact them and officially say they are on board. After Thursday I suppose we should compose some kind of informational summary to mail out to all the homeowners to bring them up to date and get their buy in. I'd like to see strength in numbers but we have to be careful we don't say something to create a difference of opinion on all the small stuff if you know what I mean...like Giant vs. this or that. The point is to let the community know we are fighting for them and if they would like to contact us they can. Esp. if it is to help.

Carol Leigh Smith
301-435-5215

Su **CCA**
Da 8/25/2004 9:02:10 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To synergiesinc@aol.com, shileyk@mail.nih.gov
Sent from the Internet (Details)

Hi Ladies

Kathie Hullie will be at the meeting on Thursday. The CCA objects to the Condos in the Town Center area and expects the town center to be built according to the master plan. She is coming to show support for our group.

Carol Leigh Smith
301-435-5215

Su **RE: CCA**
Da 8/25/2004 9:36:45 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To smithc@efdb.nci.nih.gov
CC Synergiesinc@aol.com
Sent from the Internet (Details)

Greetings ☺

Well, they can always put them on the north-west side according to the project plan or any other site designated as multi-family (south of the retail area); however, I would protest anything greater than 3 stories. That's why we need to know about the height limits. The master plan calls for high density units to be located near the retail center to fulfill urban design elements. Seeing as the RMX-2 zone is all we have (and in a 1 mile radius) for building purposes; I believe the entire community fulfills that requirement; guess we'll see what P&P (john) thinks. I'm not so sure about the Regency contract falling through right now; sounds to me it has the potential to.
ciao

CLARKSBURG TOWN CENTER
ISSUES REVIEW MEETING – AUGUST 24, 2004
AGENDA

Date: August 26, 2004

Location: Hyattstown Fire House

Time: 5:00pm

Attendees: **Clarksburg Town Center Advisory Committee (CTCAC)**
Newland Communities representatives –
Gary Modjeska, Commercial & Retail Specialist
Kim Ambrose, Vice President of Operations
M-NCPPC representatives –
Sue Edwards, Team Leader I270 Corridor Area
John Carter, Chief, Community Based Planning Division
Wynn Withans, Development Review, Planning Department
Montgomery County representatives –
Josh Bokee, Aide to Council Member Mike Knapp
Cathy Matthews, Director, Upcounty Regional Services*
Nancy Hislop, Assistant Director, Upcounty Regional Services*
**on behalf of Doug Duncan, Montgomery County Executive Office*
Department of Public Libraries –
Attendee to be confirmed

AGENDA:

- Introductions
- Situation Update
 - Chronology of events (June through present)
 - CTCAC activities (residents' election through present)
- CTCAC Presentation of Key Concerns and Expectations
 - Master Plan/Project Plan concept and compliance requirements RMX2 Zoning and requirements relative to "optional method" of development
 - Issues surrounding deviations to Master Plan/Project Plan and true "New Urban Development"
 - Proposed retail center
 - Proposed supplemental residential development (multi-family)
 - Proposed RDT Zone reduction
 - CTC Residents' Expectations
- Open Discussion
 - M-NCPPC response
 - Newland Communities response
- Agreement on Next Steps/Action Plan

Clarksburg Town Center (CTC) Advisory Committee
August 26, 2004
Minutes of Meeting

The CTC Advisory Committee conducted a CTC Issues Review Meeting with Newland Communities on August 26, 2004. The following individuals were in attendance:

Representing Newland Communities:

- Kim Ambrose
- Charlie Maier
- Gary Modjeska
- Todd Brown
- Terri Davis

Representing M-NCPPC:

- John Carter
- Wynn Witthans
- Nellie Maskal
- Sue Edwards

Representing Montgomery County Council:

- Josh Bokee (Mike Knapp's office)

Representing MC Upcounty Regional Services:

- Nancy Hislop

Representing MC Public Libraries:

- Barbara Noland

Representing Clarksburg Civic Association:

- Kathie Hulley

Representing CTCAC:

- Kim Shiley
- Carol Smith
- Amy Presley
- Joel Richardson
- Jen Jackman

Additional CTCAC members and residents in attendance: Dennis Learner, Niren and Jaya Nagda, Jerry and Regie Barbour, Randy DeFrehn, Lynn Fantle, Carolyn McAllister, Tim DeArros, Tricia Larade, Mark Murphy, and Sandy and Bob Hanagan.

****Prior to the official opening of the meeting, Todd Brown of Newland Communities voiced concern regarding the CTCAC's intent to video tape the meeting, stating, "If it's taped, we won't meet." When pressed for a reason for*

opposing the taping, Mr. Brown replied that they didn't need a reason, and once again, he reiterated that Newland Communities would leave the meeting if the session was going to be taped. CTCAC agreed to forego the taping, with notation in meeting minutes as to Newland's position.

Due to the resistance by Newland to allow recording the meeting was delayed and was officially opened at 5:20 p.m. by CTCAC Co-Chair, Kim Shiley. Introductions were made and an overview of the situation was presented by CTCAC spokesperson, Amy Presley:

- 6/14/04 HOA meeting: Residents made aware of potential issues with proposed plan.
- 7/27/04: Newland presented Amended Site Plan Proposal
- 8/4/04: Meeting of CTC residents; election of CTC Advisory Committee (CTCAC)
- 8/11/04: CTCAC Meeting
- Supplemental CTCAC activity from 8/4/04 – present.

Ms. Presley then reviewed highlights of the Master Plan, Project Plan, and Preliminary Plan #1-95042. (Please refer to handout of 8/26/04 meeting for specific details.)

Carol Smith, CTCAC Co-Chair added that the purpose of the meeting was not to be confrontational – but instead to establish communication between Newland Communities, CTC residents, and all other interested parties.

CTC Residents' key concerns:

- Deviations from the Master Plan Concept
- Deviation from Project Plan Conditions and RMX2 Zoning Requirements (relative to optional method of development)

Deviations from the Master Plan Concept included the following:

- Proposed Retail Center
 - "Strip Mall" with field parking lot
 - Not pedestrian friendly
 - Buildings not oriented to Main Street
 - Not in accordance with Master Plan/Project Plan
 - Reduced retail square footage.

Ms. Presley added that these deviations were not in keeping with the concept of the Town Center/Town Square as intended by the Master Plan, upheld by the Project Plan, approved by M-NCPPC, marketed and sold to residents. Specifically, that the center was not pedestrian friendly, did not connect with the Main Street as originally intended, and that the proposed strip configuration and stores (based on Regency's typical developments) would include major grocery, predetermined to be a Giant, flanked by

typical strip-mall fast-food establishment, also predetermined to be a Jerry's Subs & Pizza... noting that these types of establishments were not the "cafes" or "bistros" and gathering places in the "Kentlands-type" of development typical of New Urbanism and promised by Terrabrook.

- Proposed Supplemental residential (4-story plus parking, condominium units)
 - Replaces previously designated retail, while adding residential density within the Town Square area.

Ms. Presley further commented that the CTC residents were "vehemently opposed to Bozzuto's 4-story condominiums" in place of additional commercial/retail space. Ms. Presley noted that the height of the condominiums and type of development was not synchronous with the initial proposals aligned to historical/pedestrian scaled development within the town square area. In addition, a reference was made of the 7/27/04 comment by Newland Communities: "Who knew that condos would sell for \$320k?" (implication that profit only was a driver for the proposed amendment to the plans to allow for condominium development there)

- Proposed Day Care Center/RDT Zone Reduction
 - Day Care center should be placed within allocated RMX2 zone; placement within RDT or reduction of RDT Zone to accommodate is not consistent with Master Plan/Project Plan goals.
- Reduction of Originally Promised Recreational Facilities
 - Recreational areas are not as promised.
 - Newland/Kim Ambrose commented that there will be no reductions to amenities... that, in fact, the two pools are still being planned as initially proposed and that supplemental green area development was under consideration (in conjunction with placement of Day Care, as alleged by Todd Brown, additional green space would be added – CTCAC needs to investigate this point further)

CTC Residents' Expectations:

- Adherence by Newland Communities, *in all development phases*, to the Master Plan Concept.
- Development in accordance with Findings and Conditions of the Project Plan as initially proposed, approved by M-NCPPC, marketed and "sold" to CTC residents.
- RDT Zones to be upheld (i.e., no Day Care Center within RDT).
- Redesign of retail area in accordance with Master Plan with resubmission of new proposal to residents/CTCAC/CCA, and Clarksburg Historical Society for review prior to further action.

Open Discussion:

- Mr. Brown opened the discussion, commending CTCAC for their effort on behalf of the CTC residents. He then stated that “we recognize where we have **mis-stepped**” and that **“Newland Communities will need to relook at the proposed plan.”** Mr. Brown continued, adding “What I am about to tell you may not be encouraging for you to hear.” He then stated that from a regulatory point of view that the proposed site plan amendment was in compliance. Continuing, he added that 65,000 sq. ft of commercial property with 400 parking spaces has always been a part of the Project Plan. (Mr. John Carter indicated that that was not his recollection.) Ms. Presley and Ms. Shiley responded to Todd that the specific sq. footage was not as much the concern (although it was of some concern relative to the balance of retail sq. footage left for development along Main Street), but that the use of that sq. footage within a “strip mall” and “field parking lot” configuration is not in keeping with the Master Plan concept/New Urbanism design and does not promote the pedestrian friendly Town Center/Square envisioned.
- Mr. Modjeska remarked that Newland was not trying to eliminate the Town Square – that the proposed use of commercial space is in addition to the Town Square.
- Mr. Brown stated that from the July 27th meeting it was their impression that the only concern of the CTC residents was that the town square was being eliminated. He showed a concept drawing of the town square and assured the group that the town square would be built.
- CTCAC then informed Mr. Brown that this was never the issue and the retail center was the focus of our initial concern.
- Ms. Presley stated that the CTC was led to believe that the purpose of the Town Square was to serve as a gathering area supported by Main Street retail.
- Ms. Jackman commented that CTC was happy that Newland Communities agreed to revisit the design of buildings facing Main Street, because what is being proposed is not new-urbanism, as marketed by Terrabrook and outlined in the Master and Project Plans.
- There was some discussion about comparing CTC with the Kentlands, with Mr. Modjeska offering that the Kentlands has several major commercial stores with large parking lots. Ms. Shiley pointed out that the current residents of Kentlands are unhappy about the surface parking lots and that replacing them has been recommended.
- Ms. Jackman stated that the Master and Project Plans do not reflect two separate retail areas – a new traditional area and a destination area. Mr. Brown disagreed, referring to the Amenity Plan to support his comment. (CTCAC to further research here; as no previous documentation reviewed supports Mr. Brown’s points.)
- Ms. Ambrose discussed the Pedestrian Framework Plan, stating that it was the intent of Newland to allow for a second sidewalk in the retail area. Mr. Modjeska elaborated, reporting that a 20’ wide pedestrian walkway and seating area are included in the design. In his opinion, this was consistent with the Master and Project Plans. John Carter, however, noted that there should have been a

connecting street and sidewalk and that the new plan doesn't properly accommodate according to the Project Plan requirements.

- Mr. Modjeska commented on the 1994 designs of the plan did not allow for the 20' elevation grade in the retail area, with Ms. Smith adding that she had observed the construction workers remove a mound near her house... and that it was indeed possible if the developer wanted to re-grade the area. Ms. Jackman requested clarification of the mounds – stating that the topography appears to have changed as a result of the developer. Mr. Modjeska stated that the problem was being resolved by adding an exterior elevator to the commercial area. Ms. Hulley of the Clarksburg Civic Association remarked that the engineering to change the grade was available, and although it would probably be costly, it could be done.
- Mr. Modjeska reported that the commercial area has shrunk from 13 acres to 9 acres and that he assumed that it was the result of more stringent engineering and environmental regulations (specifically noting watershed issues).
- Ms. Presley posed the question: "Does Newland understand the concept of 'new urbanism'?" Mr. Modjeska replied that "new urbanism" in Montgomery County was reflected by the Kentlands, Kings Farm, and Falls Grove. The CT CAC quickly expressed disagreement that Falls Grove exemplified "new urbanism."
- A statement was made by either Todd Brown or Gary Modjeska of Newland saying they weren't sure there were any guidelines on what constitutes new urbanism.
- Ms. Witthans said, "There are."
- Ms. Smith stated that "there are 14 principles to new urbanism development."
- Ms. Shiley asked if Newland would like her to read them.
- Mr. Brown declined.
- Mr. Carter, M-NCPPC, referred to pages 15-37 of the Master Plan, where he stated that "new-urbanism" was clearly defined. He continued by stating there were several policies contained in the definition that specifically outlined the requirements for "new Urbanism," which included Policy #6 – which specifically references streetscapes, parking and pedestrian orientation. He further added that one major difference between the Kentlands and CTC was the amount of greenway. He also said that the Main Street as originally designed was to lead into historic Clarksburg, and that based on his observations of the proposed Site Plan, Newland isn't even close to reflecting that. He continued that the front entrance to CTC – from Stringtown Road – will have a significant impact on the appeal and presentation of CTC as the community of "new urbanism."

Mr. Carter expressed a valid concern regarding the proposed location of the grocery store – adding that the "front door" of the CTC community will be adorned with loading docks from the rear of the store. He further shared that the design of the streets and their connection to the residential area were also lacking. In addition, he voiced concern about the shape and size of Main Street and stated that he was "worried" about the design and shape of the parking lot. Mr. Carter asked Newland what they were going to do in response to these concerns? Ms. Ambrose responded by stating that they will take a relook and decide whether to modify the proposed site plan.

- Ms. Presley reiterated that the concepts of the Master and Project Plan need to be upheld. She further commented that she wanted assurance from Newland that they were going to support the Master and Project Plans, adding that residents will be concerned if profit is the deciding factor whether to comply with the already-approved Master and Project Plans.
- Ms. Jackman expressed concerns that the proposed design does NOT support the new urbanism concept. She questioned Newland whether contingencies are provided in the contract that if a contractor cannot comply with the design requirements that they can be released. Mr. Brown replied that Regency will be the developer of the commercial center. He further added that it might be possible for them to bring in consultants to address architectural concerns. Ms. Ambrose noted that it wasn't "fair" for CTCAC to judge Regency based on their past developments; that she did feel they were capable of new urbanism design and in developing an appropriate shopping center.
- Mr. Murphy, CTC resident, offered a brief review of King Farm's issue concerning the development of their commercial area. Initially, plans reflected building a Safeway on 355. When residents expressed concern regarding this, the plans were revised to move the Safeway to the middle of the Town Square, so that no residents were farther away than appropriate walking distance from the square.
- Ms. Presley stated that even if M-NCPPC "approves" a particular site plan/section the developer is still obligated to adhere to the approved-Master and Project Plans. (Mr. Carter had previously advised CTCAC members that even if a site plan was inadvertently approved with violations, that it could be overturned if not in accordance with the Project Plan.)
- Ms. Jackman wanted to know whether condos were still being built in what has been designated as the retail area? Mr. Brown replied that Newland plans to relook at the Main Street design in order to ensure a mixture of retail/office/Residential space. Mr. Brown suggested that the intent was to go forward with proposed condos, but with the addition of retail as the base with dwelling units above. Ms. Ambrose added that nothing had been redesigned – that Newland was soliciting our input.
- Mr. Richardson stated that Regency does not have a right to dictate site design. Ms. Presley asked Newland whether it was Regency's intent to build the retail area as a Town Center or as a "destination center?" (This question was not answered.)
- Ms. Witthans, M-NCPPC, commented that what she was hearing was that CTC does not want a Giant, CVS, and Jerry's, but instead a smaller grocery store, small shops, and cafes. She further added that she felt that it was the layout of the retail center that is CTC's major concern.
- Ms. Hulley stated that the CTC is supposed to have a unique feel to it – a great sense of community. If Newland can get the concern over \$\$\$ out of the question, the rest will follow.
- A question from a CTCAC committee member was presented regarding assurances of adherence to the approved-Master and Project Plans. Mr. Brown started off by stating that there is no approved Site Plan. Newland Communities continued by adding that inspectors and site plan enforcement teams are involved

each phase, but that the Planning Board must determine whether there is conformance with the approved-Master Plan.

A second question was posed regarding the monitoring of the construction. Ms. Witthans replied that the M-NCPPC does not make approvals based on architectural designs, but based on Project Plan compliance. She also added that a host of inspectors are involved in ensuring the compliance with zoning and conditions. (CTCAC to get list of site inspectors and validate inspection documents regarding current Bozutto development relative to height limitations.)

➤ Ms. Jackman asked whether the county had any control concerning the integrity of the architecture? It was learned that the Clarksburg Historical Society was included in the initial planning process.

➤ Another question was presented – “What happens if the construction is not in compliance with the Master and Project Plans?” Mr. Carter replied that “it will be dissembled and all fixtures and furniture put to the curb”... then stated that failure to comply with the plans could also result in fines and a site violation hearing.

➤ Ms. Hulley stated that the Master Plan reflected Main Street facing the spire of the church, and she wanted to know what attention was being given to that detail. (There was no direct answer to this question.)

➤ Ms. Jackman pointed out that other issues of concern included the placement of the Day Care center. (Day Care center amendment hearing tentatively scheduled for December; CTCAC members will follow-up on this issue.)

➤ Mr. Brown stated that Newland will regroup to address the comments and concerns revealed at the meeting. He continued that their consideration would include the Main Street and Retail center issues.

➤ Mr. Nagda commented that we (CTCAC) wanted to ensure that Mr. Carter’s concerns and recommendations are given full consideration.

➤ Ms. Ambrose said that Newland would follow up this meeting with a phone call to the CTCAC within one week, adding that it would probably take a month to develop new plans.

➤ Ms. Smith reported that New-Urban Mediators are available to assist this group in coming to an agreement.

➤ Mr. Brown stated that Newland has already submitted a site plan application. Ms. Ambrose said that although they aren’t willing to withdraw the application, they can consider making modifications.

➤ Ms. Witthans revealed that a board hearing has been tentatively scheduled for September 30th relative to the West side of Main Street (separate site plan proposal for townhouse development); This hearing concerns a site plan for approval of the townhouse development across from the East side (the currently proposed Bozutto condominiums and retail center section). Ms. Presley stated that it didn’t seem feasible to go to hearing on September 30th for this section since the opposite/balancing East Side was still under contention. Further, she added that it didn’t make sense based on John Carter’s comments regarding the need for holistic planning of the Town Square and Main Street areas – specifically relative to “significant buildings” – to proceed with a hearing when the decision on the West side development could well affect the rationale for building on the East side. She stated that it was evident that they should not proceed on a

decision without prior planning and agreement relative to the entire Main Street scape – especially the balancing East side. Mr. Carter stated that he had to “agree with Ms. Presley, that it doesn’t make sense to go forward with the September 30 hearing in view of the current situation.” He further stated that progress should first be made to address the issues with the retail center and overall plan for Main Street and the East side prior to pushing for approval on the proposed West side plans. (Ms. Ambrose was visibly agitated by this.)

- Ms. Presley stated that regardless of timing for the hearing, CTCAC wants to be present at the hearing and intends to be active participants in all future site plan submissions or proposals to amend existing plans.
- Mr. Carter suggested that another meeting be held in a couple of weeks to review an alternate plan prior to the September 30th tentative hearing date. Ms. Ambrose advised that there would be no way possible for them to redesign the retail site in time for such a meeting. Mr. Carter implied then (and confirmed after the meeting) that it would not be possible for M-NCPPC to go forward with the hearing in view of the issues surrounding the site plan proposal.
- It was noted that the CTCAC would follow-up with John Carter relative to the potential September 30th hearing.
- Regarding the site plan amendment in question for the retail center and condominium development, Newland did not make commitments beyond the intent to “revisit” the issue and reply to the CTCAC within one week regarding next steps.
- Carolyn McAllister had to leave early. The following additional comments were added not in any specific order:
 - CTCAC spoke of the height concerns. The original plans specify 3 stories (45’) for residential and 4 stories (50’) for commercial. Somewhere along the way that data sheet changed to 4 stories (45’) for residential and 4 stories (50’) for commercial. However, there is no indication of how or when it changed and whether or not that change was ever approved.
 - When CTCAC asked what would happen if it was determined that the height restriction had been violated, Mr. Carter said, “the furniture hits the street”. He went on to say “if violations are found, fines are issued.”
 - CTCAC raised the issue that the view of the historical area, in particular the church steeple and the moon over the town center, would be compromised if the 2 over 2 townhouses or 4 story condos with lofts were constructed.
 - CTCAC expressed a concern about the site plan for the left side of the town center (west). It was understood that a hearing for the approval of the site plan for this area would go forward on September 30, 2004.
 - Ms. Ambrose and Mr. Modjeska stated that the site plan would not be withdrawn.
 - Mr. Brown informed the CTCAC that we should let Park and Planning know that we want to be informed when there are site plan hearings.
 - Ms. Edwards gave the CTCAC the contact information to be added to the list at Park and Planning so that we can begin to receive notice of site plan and project plan submissions for all future development in the Clarksburg Town Center.

- Ms. Presley asked how could the site plan for the west side of the Town Center be approved prior to the redesign and submission of the east side (retail center) of the Town Center.
- Mr. Carter said "good point, I'd like to see both sides submitted together".
- Ms. Witthans agreed.
- The CTCAC also voiced a concern over the proposed location of the daycare center stating that it should not be in the green space. The CTCAC noted for the record that we are NOT opposed to a daycare center only the location of the center.
- Newland stated that they believed that to be an ideal location for the children to play in and thought residents would be pleased.
- Again CTCAC stated that green space should not be used for buildings and the day care facility should be placed within the properly zoned area.

Carolyn McAllister, 9/26/04

Subj: **Thank you**
Date: 8/30/2004
To: nellie.maskal@mncppc-mc.org
CC: Shileykim@aol.com, smithcar@mail.nih.gov, jersub13@yahoo.com, JJackman@wtplaw.com

Hello, Nellie.

We just wanted to take a moment to thank you for attending the August 26th meeting of CTCAC and Newland Communities. We very much appreciated your presence and your input relative to the intent of the Master Plan. As you know, we are committed to upholding that concept.

Also, thank you for your ongoing help in providing information and documentation for our research. We wouldn't have been able to wade through the volumes without your assistance.

Sincerely,
Kim Shiley
Carol Smith
Amy Presley
Jen Jackman
Joel Richardson

Subj: Thank You
Date: 8/30/2004
To: john.carter@mncppc-mc.org
CC: Shileykim@aol.com, smithcar@mail.nih.gov, jersub13@yahoo.com, JJackman@wtplaw.com

Hello, John.

We just wanted to take a moment to thank you for attending the August 26th meeting of CTCAC and Newland Communities. We very much appreciated your presence and your input relative to the intent of the Master Plan. As you know, we are committed to ensuring that the developer(s) uphold that concept... and we are delighted that you are equally insistent upon adherence to the intent of the Master Plan and Project Plan.

We especially appreciated your support relative to the tentative September 30th meeting. It seemed evident to us that that could not proceed without prior planning and agreement relative to the entire Main Street scape, and especially the opposite/balancing East side.

Thank you for your time and effort. We look forward to continuing work with you.

Sincerely,
Kim Shiley
Carol Smith
Amy Presley
Jen Jackman
Joel Richardson

Subj: **Thank You**
Date: 8/30/2004
To: Wynn.witthans@mncppc-mc.org
CC: Shileykim@aol.com, smithcar@mail.nih.gov, jersub13@yahoo.com, JJackman@wtplaw.com

Hello, Wynn.

We just wanted to take a moment to thank you for attending the August 26th meeting of CTCAC and Newland Communities. We very much appreciated your presence and your input relative to the intent of the Master Plan. We are very happy to know that you are so committed to upholding that concept.

As you are aware, the residents of CTC expect adherence by the developer(s) to the intent of the Master Plan and Project Plan. Together with M-NCPPC, we can ensure the promised outcome for the community and county at large. We appreciate all the work you have done to date in this regard and we look forward to supporting you in your efforts from this point forward.

Sincerely,
Kim Shiley
Carol Smith
Amy Presley
Jen Jackman
Joel Richardson

Subj: **Thank You**
Date: 8/30/2004
To: Sue.Edwards@mncppc-mc.org
CC: Shileykim, smithcar@mail.nih.gov, jersub13@yahoo.com, JJackman@wtplaw.com

Hello, Sue.

We just wanted to take a moment to thank you for attending the August 26th meeting of CTCAC and Newland Communities. We very much appreciated your presence and your input relative to the intent of the Master Plan. As you know, we are committed to ensuring that the developer(s) uphold that concept... and we are delighted that you are equally concerned with their adherence to the intent of the Master Plan and Project Plan.

Together with M-NCPPC, we can ensure the promised outcome for the community and county at large. We appreciate all the work you have done to date in this regard and we look forward to supporting you in your efforts from this point forward.

Sincerely,
Kim Shiley
Carol Smith
Amy Presley
Jen Jackman
Joel Richardson

Subj: **Thank You**
Date: 8/30/2004
To: kambrose@newlandcommunities.com
CC: gmodjeska@newlandcommunities.com, cmaier@newlandcommunities.com,
tdavis@newlandcommunities.com, tbrown@linowes-law.com, Shileykim, smithcar@mail.nih.gov,
jersub13@yahoo.com, JJackman@wtplaw.com

Hello, Kim and all.

We just wanted to take a moment to thank you for attending the August 26th meeting with CTCAC and M-NCPPC to review concerns and potential issues with development of CTC. We very much appreciated your presence and your willingness to discuss the concept and intent of the Master and Project Plans. As you know, CTCAC is committed to ensuring that the Master Plan concept be upheld, and eager to work with Newland to foster that compliance relative to the proposed retail area, the Main Street/Town Square area, and overall CTC development.

Working together with Newland and M-NCPPC, we are confident that a successful plan will be derived for development that reflects the intent of the Master Plan and appropriately serves the community and county at large.

We look forward to hearing back from you this week relative to your response on issues raised and your proposed next steps.

Sincerely,
Kim Shiley
Carol Smith
Amy Presley
Jen Jackman
Joel Richardson

Subj: **Additional questions**
Date: 8/30/2004
To: john.carter@mncppc-mc.org
CC: Shileykim@aol.com, smithcar@mail.nih.gov

Hi, John.

Our group was left with a few questions regarding zoning, Project Plan requirements and the overall site plan approval process. We would appreciate the opportunity to speak with you further; however, we understand that your schedule is very hectic. In view of that, it would be our pleasure to take you (and Wynn?) to lunch tomorrow or later this week.

I'll give you a call later today to determine a convenient date and time.

Sincerely,
Amy Presley

Subj: Re: meeting announcement
Date: 9/2/2004
To: smithc@efdb.nci.nih.gov

Hi, Carol....

Made a few changes...hope you don't mind (I do a lot of editing on projects and can't seem to help myself ..LOL).

TOWN MEETING

At the last Town Meeting (August 4, 2004; over 100 residents in attendance) the residents of the Clarksburg Town Center formed an Advisory Committee (CTCAC) to work with Newland Communities on the development of the Town Square and Retail Center plan. This was done in response to the previous meetings with Newland (July 27 and prior) which alerted residents to issues surrounding Newland's site plan proposal (relative to conformance with the Master Plan) and the residents' need for a representative body to investigate and take action on these issues.

Since their election on August 4, the CTCAC has covered much ground with Newland and with Maryland National Park and Planning Commission (M-NCPPC). Most significantly, a meeting was held on August 26 with CTCAC, Newland Communities, M-NCPPC, and County Officials. In order to bring all residents up to date on the results of these meetings, as well as interim findings of the CTAC, we are holding a meeting on September 16, 2004. This meeting will

only be open to the people who live in the Clarksburg Town Center community. It is important that we as residents stay informed and remain involved with the development of our neighborhood, as we all share the vision for CTC and have invested in this community through our special Clarksburg tax.

Your attendance will be greatly appreciated!

Meeting Details:

Date: Thursday, September 16, 2004

Time: 7:30 pm

Location: Hyattstown Fire Station

25801 Frederick Road (Rt. 355), 2nd Floor

Directions: Turn right onto Rt. 355 (Frederick Road) and

follow 355 to the intersection of Hyattstown Mill Rd. The firehouse is on the right.

Carol Leigh Smith
EFDB/NCI/NIH
301-435-5215

SENT BY US MAIL
AND EMAIL

Clarksburg Town Center Advisory Committee

September 13, 2004

Via U.S. Mail

Kim Ambrose
Newland Communities
8201 Greensboro Drive, Suite 817
McLean, VA 22102

Re: Proposed mid-October meeting

Dear Kim:

We are writing on behalf of the Clarksburg Town Center Advisory Committee to express our disappointment with Newland's response to our meeting of August 26, conveyed in your email of September 7, 2004. Our concerns can be characterized as falling into three categories. First, we anticipated an ongoing working relationship with Newland throughout the process of planning the Town Center and retail areas. Second, it was our expectation and hope that the issues regarding the Town Center and retail areas would be addressed prior to the public hearing tentatively scheduled for September 30, 2004, at which the development of the area to the West of the Town Center is to be discussed. And third, Newland's response appears to indicate an intention to move ahead with little regard for our mutual commitment to work together, as well as a failure to acknowledge John Carter's expressed concerns regarding the need to develop both the East and West sides as a cohesive unit.

We hope that Newland's response arises from a misunderstanding of our expectations and a miscalculation of our interest in remaining informed of and actively involved in the design and development of these – and all remaining – sections of the development.

Of particular concern is Newland's failure to appreciate the necessity for transparency in the process as a means to engender mutual trust. We continue in our desire to work together in an amicable relationship for our mutual benefit, and hope that Newland shares this desire.

As a step toward continuing this cooperative relationship, we would appreciate an express commitment from Newland to submit the Site Plan Amendment Applications for the East and West sides of the Town Center area at the same meeting, after all concerns have been addressed. Moreover, we would appreciate more substantive updates of Newland's progress on the concerns addressed at the August 26 meeting – and throughout the redesign process – so that we may understand the action that Newland plans to take on this matter.

We firmly believe that timely and comprehensive progress updates are an important step toward fostering a good working relationship. In fact, we request that Newland schedule a progress update/working meeting with the CTCAC well in advance of the mid-October date proposed in your email. This would hasten the progress toward a final design by eliminating the possibility of Newland creating a new plan without full knowledge of the residents' perceptions of the proposed design and/or issues relative to variance from the Master Plan concept and Project Plan guidelines.

We continue to appreciate Newland's interest in working with the residents of Clarksburg Town Center to design and develop a neighborhood we can all be proud of, and we look forward to your response.

Sincerely,

Jennifer Jackman
Amy Presley
Joel Richardson
Kim Shiley
Carol Smith

Subj: Re: Follow-up
Date: 9/13/2004
To: kambrose@newlandcommunities.com
CC: landerson@newlandcommunities.com, tdavis@newlandcommunities.com, tbrown@linowes-law.com, Shileykim@aol.com, smithcar@mail.nih.gov, jersub13@yahoo.com, JJackman@wtplaw.com, MaierPR@aol.com, gmodjeska@areapropropertiesllc.com, wynn.witthams@mncppc-mc.org, michael.ma@mncppc-mc.org, nellie.maskal@mncppc-mc.org

Hello, Kim.

First, thank you for your response. It is good to know that you are working diligently on the issues, and on behalf of the CTCAC I apologize if you read more into our letter than was intended. To be honest, your email response of September 7 did not communicate what you have communicated today regarding Newland's work on the issues presented August 26. The September 7 email seemed to contradict the message that we heard from you at the August 26 meeting - i.e. that Newland would work with the 5 CTCAC members to receive input for the revised plan. Our disappointment in your September 7 email, specifically lack of information such as you shared today, generated the concerned tone of our response letter.

After reading your email of this morning, I can assure you that knowledge of the specific Newland efforts will help alleviate some of the concerns felt by CTCAC and expressed in our response letter. However, we would still anticipate that Newland would want the input of the CTCAC during the re-design phase rather than waiting until the end of the process. We believe it would be helpful for us to collaborate between now and the proposed mid-October meeting. I'll give you a call later today to get your thoughts and determine how we might work together in the interim.

Again, thanks for your response.

Sincerely,
Amy Presley (on behalf of CTCAC)

-----Original Message-----

From: Kim Ambrose [<mailto:kambrose@newlandcommunities.com>]
Sent: Tuesday, September 07, 2004 12:12 PM
To: Shileykim@aol.com; Smith, Carol Leigh (NIH/NCI); jersub13@yahoo.com; JJackman@wtplaw.com
Subject: Clarksburg Town Center

Hi Amy, Kim, Carol, Joel & Jennifer

Thursday, May 19, 2005 America Online: Synergiesinc

I just wanted to touch base and let you know that we have been discussing your concerns with the Town Center component of Clarksburg and feel that we would be ready to get together again sometime in mid-October (before 10/15). I'll be back in touch within 2 weeks to discuss a specific date, in the meanwhile if you have any questions please e-mail or call me. Thanks.

Kim Ambrose

Newland Communities

NEW ADDRESS effective March 19, 2004:

8201 Greensboro Drive, Suite 817

McLean, VA 22102

703-917-4174

703-917-4218 FAX

kambrose@newlandcommunities.com

In a message dated 9/13/2004 10:13:08 AM Eastern Daylight Time, kambrose@newlandcommunities.com writes:

Hello Amy

I have to say that I'm very disappointed in the letter that you've sent me. We have been working diligently and in good faith on this issue: meeting in-house, talking with County officials as well as interviewing new architects and planners to address the issues that your group has brought up. I would like to say that we would be able to meet with you sooner than mid-October but given our consultants workloads and the time we feel is needed to properly address this site plan, Mid- October is a realistic timeframe. We are NOT hiding anything or going behind your back as you seem to imply in your letter. We have agreed to meet with your group and work towards a successful plan and that's exactly what we plan to do. You should also know that we are NOT moving forward to the Planning Board with the Phase 1A-4 residential plan on Sept. 30. I said in the Aug. 26th meeting, that we would hold-off on that plan until we progressed further on the retail center plan and that's exactly what we have done. I would be happy to talk with you or any member of your group further about your letter.

Kim Ambrose

Newland Communities

NEW ADDRESS effective March 19, 2004:

8201 Greensboro Drive, Suite 817

McLean, VA 22102

703-917-4174

703-917-4218 FAX
kambrose@newlandcommunities.com

CLARKSBURG TOWN CENTER
RESIDENTS' MEETING – SEPTEMBER 16, 2004
AGENDA

Date: September 16, 2004
Location: Hyattstown Fire House
Time: 7:30pm

AGENDA:

- Introductions (Kim Shiley/Carol Smith – CTCAC Co-Chairs; CTCAC members)
- Situation Overview / Chronology of Events (July 27, 2004 meeting through present)
- Key Concerns and Expectations Presented by CTCAC to Newland and M-NCPPC (August 26, 2004 meeting)
 - Concerns
 - Deviations to Master Plan/Project Plan and true "New Urban Development":
 - Proposed retail center
 - Proposed supplemental residential development (multi-family)
 - Proposed Day Care Placement
 - CTC Residents' Expectations
 - Working relationship with Newland/CTCAC on behalf of CTC residents
 - Redesign and resubmission by Newland of site plan(s) for town square area (West side and East side/retail center) in compliance with Master Plan Concept
 - Notification of and opportunity for review of all future site plan proposals
- Response and commitments from Newland Communities and M-NCPPC:
 - Newland Communities
 - Agreement to form working committee with CTCAC
 - Agreement to postpone intended September 30 board hearing (West Side plan)
 - Agreement to redesign the retail (East side) site plan (specifically to make East/West sides cohesive in design and conforming to Master Plan concept)
 - Agreement to meet with CTCAC to present new conceptual design options (early October) and receive input prior to re-submission to M-NCPPC
 - M-NCPPC
 - Disapproval of plan(s) as presented by Newland (specific issues regarding placement of retail/positioning of buildings/loss of greenway, deviation from Master Plan concept, etc.)
 - Requirement that Newland redesign site plan(s) for resubmission
 - Assurance to CTCAC that no plan(s) would be passed by the Board if not in compliance with Master Plan Concept, or if significant resident disapproval was expressed to the board
 - Commitment to work with CTCAC to help ensure return to the Master Plan Concept
 - Agreement to put CTCAC on list to receive all future site plans/amendments for review
- Next Steps / CTCAC Action Plan
- Q&A / Open Discussion

Su **RE: Kim Ambrose**
Da 9/21/2004 11:08:00 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com, shileyk@mail.nih.gov
Sent from the Internet ([Details](#))

In the letter to the residents it is clear that they did NOT address the issue that irks so many of the residents. NO condos in the retail section. Maybe they think that putting shops in the ground floor of the condos will make us happy. Not so. In fact, I thought we said that on August 26th. If they want to wait until they meet with us in October to introduce us to the architect then you can be almost certain their new concept will still require changes. All the more reason to do what Wynn suggested and make a list of what we expect them to change in the current plan. Maybe a simple list with enough detail to explain our reason for putting it on the list.

-----Original Message-----

From: Synergiesinc@aol.com [<mailto:Synergiesinc@aol.com>]
Sent: Tuesday, September 21, 2004 10:23 AM
To: Smith, Carol Leigh (NIH/NCI); Shiley, Kimberly (NIH/NCI)
Subject: Re: Kim Ambrose

She did respond. She said that they intend to have the architect present at our meeting in early October. Their plan was to study our comments and M-NCPPC input from Aug 26 meeting, incorporate into new concepts, present and discuss ideas with us (with the Architect present) and then wrap that into a final site plan proposal.

Su **RE: meeting tomorrow**
Da 9/21/2004 11:11:08 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com
Sent from the Internet ([Details](#))

Let's do the meeting next week so more people can attend. In the meanwhile we probably have enough notes from our meetings and minutes to at least draw up a draft of the list to take to the meeting next week and have the entire CTCAC approve it in time to get it to Newland and to Wynn before the month's end. What do you both think? If we meet on the 29th we could email Wynn and Kim Ambrose with the list on the 30th.

-----Original Message-----

Su **RE: meeting tomorrow**
Da 9/21/2004 11:35:34 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com
CC shileyk@mail.nih.gov
Sent from the Internet (Details)

I agree about the list. I sure hope Newland doesn't go back to the original plan and put condos across the street from me but I don't know what's worse, condos or two over twos. I hope the height findings come back supporting our claim that they are over the limit. I just hope they don't have some way to change the height restriction. I have a feeling they can and will change it somehow.

If I get an OK from Kim, I'll change the meeting to next Wednesday the 29th. OK Kim?

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]
Sent: Tuesday, September 21, 2004 11:31 AM
To: Smith, Carol Leigh (NIH/NCI)
Subject: Re: meeting tomorrow

That seems fine, Carol. Next week would probably be better.

I do believe, however, that Kim is aware of that as an issue too. Also, John made it clear to Wynn that there needed to be research regarding heights of buildings relative to Condos, and that that would not be the most appropriate for that section, and that he would like to see them come back with a plan that reflects the original (condos were not on the main street). That being the case, I do think that Wynn will convey that information. I don't think it will hurt for us to submit the list to Kim, "at the suggestion of John Carter and Wynn Witthans, we have prepared a consolidated list of the issues.....blah blah blah"..... as long as we word it carefully as a response to M-NCPPC urging, rather than our laundry list of wishes.

Su **RE: meeting tomorrow**
Da 9/21/2004 12:11:17 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To smithc@efdb.nci.nih.gov, Synergiesinc@aol.com
Sent from the Internet (Details)

I've talked with Nellie; she's trying to locate some staff reports and planning board opinions and she said to contact wynn re: approved site plans/phases. Left a message for wynn
Have to go; will be back

Su **RE: CTCAC Meeting**
Da 9/21/2004 2:21:51 PM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To smithc@efdb.nci.nih.gov, barbourjr@att.net, bull30@comcast.net, timdearros@comcast.net, rdefrehn@nccmp.org, lfantle@aol.com, susan@mris.com, dennis@dlearner.com, cariandieff1@comcast.net, murfs@comcast.net, nnagda@energenconsulting.com, JJackman@wtplaw.com, iersub13@yahoo.com, Synergiesinc@aol.com, shileyk@mail.nih.gov
Sent from the Internet (Details)

Hi Everyone,

Too many of you responded that you could not make the meeting tomorrow so we have decided to postpone it until next Wednesday, Sept. 29th at 7:30 still at Kim's house. This also allows us time to gather more documents from Park and Planning that we have requested. Please let me know if the new date works for you so I can give Kim a head count.

Carol

Su **RE: CTCAC Meeting**
Da 9/22/2004 11:24:22 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To smithc@efdb.nci.nih.gov, murfs@comcast.net
CC Synergiesinc@aol.com

Sent from the Internet (Details)

greetings all,

well nellie was supposed to have been at the meeting last evening to give me more documents, but she didn't show. and wynn has not called me back yet. i will call her again today. Amy, have you spoken to her yet? i may be able to go to P&P late friday, to pick up those missing puzzle pieces.

then, i am sure we need help. we need to come up with a list of issues/concerns for Wynn as she had asked for. one of my concerns is with the church vista and that is one thing i'm trying to get more info about. can we come up with a list of concerns (for wynn and also mentioned at resident's meeting) via email, then we may be able to have Mark tackle some of them. another issue that i need to find out more about is, how many grocery stores will there be in the entire clarksburg town. seems to me there are many planned...cabin branch for sure. i think this is important to know in our negotiations of the town center retail....i still believe we should have the most unique grocery store in the entire community....and many restaurants.

more later,

kim

Su **RE: CTCAC Meeting**
Da 9/22/2004 1:18:52 PM Eastern Daylight Time
Fr shileyk@mail.nih.gov
To Synergiesinc@aol.com

Sent from the Internet (Details)

yes, a conference call may work really well....any time/day specifically for you?

okay, two lists because some of those resident's concerns may not involve KA, but someone else with Newland and we may need ancillary committees to monitor. mark seems to be a hard charger and able to dig up info; just want to keep his motivation up as well as some others.

last night's CCA planning meeting was concerning....so many clarksburg residents are angry. they hate that any kind of development is happening. one woman's comments "what about bambie and his family, what about the ducks" "they've been here longer". that may be why developer's just don't take folks seriously; the development is coming, we need to make sure it's done smartly...."smart growth".

can you make the CCA general meeting next Monday? they do want an update of events presentation. they've notified Newland, but no response yet. they haven't had a general meeting since July, so many folks need updated. we can use so much of what you have already pulled together; we could do a tag team presentation.

i will still try to contact wynn today, because i just want to get more info, so that we can come up with that list.
kim :)

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]

Sent: Wednesday, September 22, 2004 12:04 PM

To: Shiley, Kimberly (NIH/NCI)

Subject: Re: CTCAC Meeting

Hi, Kim.

Thanks for your relentless work, as usual! As for Wynn, I was holding off calling her until we had our list of questions for her. I think we are dealing with two separate lists, though. We need one for the resident concerns needing answers/investigation by Wynn (i.e. phasing of amenities? who audits developer's progress/completion of one before moving to another? etc.) and one for the total list for transmittal to Kim Ambrose. The KA list should merely summarize the points and issues as discussed Aug 26, plus the comments made from P&P specifically relative to what they want to see..and what we want to see done.

Anyway, it would be helpful for Mark to work on the gathering of all supplemental issues -- a survey of what roads are in bad shape, what amenities are not yet provided in areas where other development is complete, etc.

Wynn should be getting back to us on the height issue this week? But I do think we need a planned call with her - -- maybe we should set up and invite her to a conference call?

Let me know your thoughts.

Su **RE: CTCAC Meeting**
Da 9/22/2004 3:42:52 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com

Sent from the Internet (Details)

About 15-20 minutes; very informal; something similar to our update (timeline of events). the CCA never saw the proposed plans; they had no idea. We only showed it to their planning committee (Kathie/Paul/Krisna). So I said we will have it available for viewing and can have the project plan available too.

They are also going to prepare their members for a possible motion to support our position when that becomes necessary. Their next meeting in October will be the 25th.

I also said we would let them know when Newland contacts us for a review, so their planning committee can be there as well.....hope that's okay?

☺ ☺

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]

Sent: Wednesday, September 22, 2004 2:12 PM

To: Shiley, Kimberly (NIH/NCI)

Subject: Re: CTCAC Meeting

hi, Kim. I plan to attend the Monday night meeting. Didn't know they still expected us to present. I will be away (upstate New York) from Friday a.m. through late Sunday, so not much time to prep... How much time will they give and what format do you think we should use? Same as the CTC update meeting?

Let me know

Su **RE:**
Da 9/23/2004 2:20:12 PM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com, shileyk@mail.nih.gov
CC David@HunterFam.net, jersub13@yahoo.com

Sent from the Internet (Details)

I can make it. Please Please don't let them change it to the 13th, 14th or 15th. It's possible I could swing the 13th but I am going out of town by no later than that Thursday a.m. All that to say that 3:00 on the 12th is fine with me.

GREAT NEWS!!!! Shall we snap a few mor pix of our favorite hot spots or do we have enough. I'll order prints of all the ones I took plus the one Kim gave me from Silver Spring. Kim-do you have more?

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]

Sent: Thursday, September 23, 2004 1:14 PM

To: Shiley, Kimberly (NIH/NCI); Smith, Carol Leigh (NIH/NCI)

Cc: David@HunterFam.net; jersub13@yahoo.com

Subject: Re:

1. Still haven't seen the Gazette article, but will this afternoon. Sounds like it was a good one. As for conference call or lunch with reporter, I would be pleased to oblige.

2. GREAT NEWS from Kim Ambrose:

She left me a message this morning stating that they have decided that an "interim meeting" as we suggested would be very helpful. They would like our core team to meet with them and their designers to give input and show pictures we have gathered, etc. Suggested meeting date: October 12, Bethesda (Newland Office), "as early as we can make it". Kim hoped for 3pm on, but I told her I would coordinate with our group and get back to her tomorrow or Monday.

Hmmmm...seems like we will have a "charette"?!

All, please get back to me with your earliest available time for a 10/12 meeting. I can make 3pm.

Su CTC
Da 9/27/2004 9:16:11 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To wynn.withhans@mncppc-mc.org
CC john.carter@mncppc-mc.org, synergiesinc@aol.com, smithc@efdb.nci.nih.gov
Sent from the Internet (Details)

greetings Wynn:

i'm needing to get in touch with you today and can be reached at home (301-515-0144). i realize that it must be a busy time for you all; however, the reason for my 3 attempts to reach you last week is that we do need some information/clarification. we are expected to update the CCA general meeting this evening (monday, 27th Sep) and would like to have accurate statements for them.

specifically, we need:

- (1) clarification of the height issue; discrepancies with data sheets and project plan
- (2) changes to the approved project plan relative to the location of the multifamily units, single family attached and townhomes (this impacts Section 1A and must be addressed now due to request for site plan amendment)
- (3) changes relative to the church vista; specifically, the current absence of the "diagonal pedestrian mews". "the mews contains sitting areas and two large lawn panels and connecting walks, linking the church with the Town Square. the sitting area closest to the Town Square includes a trellis and a memorial to John Clark with the use of found headstones from the family grave site. the mews develops a visual and walkable axis between the church and the Town Square, highlighting these significant features of the existing and proposed development".
- (4) location of pool in town square area and absence of a proposed tennis court.(why did the amount of recreation get reduced from the approved project plan to the Phase 1 approval?) the project plan gives specific location for this required recreation facilities. the proposed new location for the pool impacts the church vista.

i do appreciate your assistance wynn and look forward to hearing from you today.

Kim

Su RE: CTC
Da 9/27/2004 9:29:08 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To shileyk@mail.nih.gov
CC Synergiesinc@aol.com
Sent from the Internet (Details)

Hi Kim,

We need to hold her to the fact that she said they would get an inspector out there to measure. We also need to know how high are the two over twos? They are already selling them!!!

Su **follow up**
Da 9/27/2004 5:59:32 PM Eastern Daylight Time
Fr shileyk@mail.nih.gov
To wynn.withthans@mncppc-mc.org
CC john.carter@mncppc-mc.org, nellie.maskal@mncppc-mc.org, sue.edwards@mncppc-mc.org,
 synergiesinc@aol.com, smithc@efdb.nci.nih.gov

Sent from the Internet (Details)

Wynn,

Thank you for taking the time to speak with me today concerning the issues I submitted via email. Confirming our conversation today, I understand that:

- You will not be following up further through your office relative to project building height verification; You would like us to contact the developer (Newland) directly regarding the height issues and for any documentation or validation of height requirements and compliance.

- Regarding the church vista and view as initially proposed in the Master & Project Plans and shown in the Phase 1 Site Plan (specifically relative to the "diagonal pedestrian mews" - from a lawn mews to a street mews - as supporting the initially planned church vista), and the placement of the community pool in that diagonal pedestrian mews, you maintain that those issues were already discussed and that the current development plans seem acceptable in your opinion. Although I mentioned that this seemed to me to be contrary to what was expressed by John Carter and all present at our meeting with M-NCPPC on August 21st, you acknowledged that we have a difference of opinion on this issue.

NO AMENDMENTS
ON RECORD

* (TYPED =
(AUGUST 11)
NOT 21)

- Regarding the changes to the approved project plan relative to the location of the multifamily units, single family attached and recreation areas, you maintain that the Project Plan merely showed a "series of sample blocks" and that the initial locations on the Project Plan are not binding. When reminded of the concern that condominiums were suggested to be placed above the retail/office space on Mainstreet, you stated "we can talk about that", as you believe the developer to be working within the guidelines of the Project Plan.

I do not believe our conversation overall, was in keeping with the information we discussed with John Carter, Nellie Maskal, Susan Edwards and you at our meeting of August 21st. However, I will attempt to convey the information accurately to the CTCAC and determine from there how we can proceed on these issues.

As I mentioned, Newland is meeting with our CTCAC board, along with their new architect/designer, on October 12 to discuss our input relative to the Commercial/Retail section. Although I do not feel that it is appropriate for the CTCAC to acquire the information from Newland regarding their compliance with height issues, etc., I will present your suggestion and opinions on that to the CTCAC and get back to you if we require further information, validation or assistance from your office.

Thank you,
Kim Shiley

Su RE:
Da 9/29/2004 8:51:48 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com, smithc@efdb.nci.nih.gov
Sent from the Internet (Details)

right on sister!! i agree; keep us spinning tactic and maybe we'll go awaywrong!! this has been my concern re: site plans....changes seem to be made, but the planning board isn't seeing them ??? tonight should be interesting.... i wonder what jerry will be saying.....kathie thinks we should have him investigate the relationships and money linkages of the planning board ...ie. who did they receive campaign funds. and maybe cc too. i'll get more clarification from her. but whatever she thinks is public record and she says she'd love to see it put in print.

more later

;))

[Shiley, Kimberly (NIH/NCI)] -----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]

Sent: Tuesday, September 28, 2004 5:09 PM

To: Shiley, Kimberly (NIH/NCI); Smith, Carol Leigh (NIH/NCI)

Subject: Re:

Not a peep! I think we need to copy Michael Ma on the response to Wynn and then I will follow-up with a call to him to get the height check in motion. I think it will help if we first review all the height notations on the site plans we have.....

better than that, we need to somehow validate that we have ALL of the site plans and confirmation as to which belongs to which ... and which is THE site plan that counts relative to height!!! I don't doubt for one minute that the ambiguity of the process is an evolved skill and protection to cover butts and to enable the developers!

Su **FW: follow up**
Da 9/30/2004 3:28:38 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To synergiesinc@aol.com, smithc@efdb.nci.nih.gov
Sent from the Internet (Details)

-----Original Message-----

From: Witthans, Wynn [mailto:Wynn.Witthans@mncppc-mc.org]
Sent: Thursday, September 30, 2004 3:04 PM
To: Shiley, Kimberly (NIH/NCI)
Subject: RE: follow up

Kim -

Please let me clarify your summary of our quick phone call -

1. We have followed up on the request for more info re the height of the Buzzuto condos. We are waiting for more information from the developer.

2. The diagonal street was part of the project plan and was, at one time, proposed to be a pedestrian mews. It is now approved as a street, per the original project plan. The pool is not within the street, but is within the block. It should not block any views between the church and central green. The pool was at one time integrated within the multifamily units - it's proposed location (across the street) places it more centrally within the subdivision. Let's talk further about this with a drawing in front of us, so I can better understand what your concerns are.

3. I had a lengthy conversation with John Carter this week with your list of questions/concerns in front of us. John asserted to me, as he feels he has done in public meetings, that the Project Plan provides one level of design. This level of design is amended and modified by subsequent (more detailed) site plans as long as the modifications to the Project Plan reinforce the essential principles of the Project Plan. Within this understanding is a degree of flexibility (or "morphing" as we discussed earlier) which can sometimes lead to differences of opinion. As a combined staff, whether in the Development Review division or the Community-Based Planning division, we expect the Project Plan will be upheld through subsequent approvals.

I hope this helps.

Wynn E. Witthans
Development Review Division, M-NCPPC
8787 Georgia Avenue, Silver Spring MD 20910-3760
Site Plan Review
(301)495-4584
<mailto:Wynn.Witthans@mncppc-mc.org>

Su **RE: follow up**
Da 9/30/2004 8:03:53 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To Synergiesinc@aol.com, smithc@efdb.nci.nih.gov
Sent from the Internet (Details)

geez, i actually thought something was on fire over your way...glad to know it's steam :)

yep, kinda thinking the same crummy thought.
but, john carter has left a message on my machine; call me so i can let you hear it; i'll write down ver baitum (sp?) what he said so i can repeat
only bad thing is that i'm exhausted and will probably be asleep by 930; but i'm up at 0500...call if you can before or in the am. i leave for work at 0610.

he suggested i return his call tomorrow..maybe we can get that conference call going in the afternoon

it's interesting that she didn't cc it to john carter ??? like we wouldn't let him see it.

kim

-----Original Message-----

From: Synergiesinc@aol.com
To: Smith, Carol Leigh (NIH/NCI); Shiley, Kimberly (NIH/NCI)
Sent: 9/30/2004 6:34 PM
Subject: Re: follow up

What the heck she was saying was that she is supporting things as they come along in their "morphed" fashion...asserting that they are indeed in keeping with the intent of the Project Plan. We've got trouble here ladies....and it's the kind that is merely reflective of the more serious issues within M-NCPPC. I believe that we need to get something in a written form from John stating his requests (i.e. to see the site plan(s) return to the "original project plan"...and his other emphatic statements relative to the "mews" and streetscape). It appears to me that Wynn will twist anything to suit the developers. DO YOU SEE THE STEAM coming from my head?!!

Su **RE: follow up**
Da 10/1/2004 9:09:43 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To smithc@efdb.nci.nih.gov, Synergiesinc@aol.com
Sent from the Internet (Details)

he said:

"hi, this is john carter with park and planning calling. i know it's late, but it's planning board day. i see you have some emails here and i am sure you're getting a response from us. but i'm curious as to what else you would need. there are a series of questions you had. i've got answers and let's see if that matches what everyone has said here. call me back".

i've check the organizational chart at P&P:

Charles R. Loehr, is the Director

there are 16 offices, divisions, programs under him

John Carter is the Division Chief for Community-based planning

Richard Hawthorne, is the Acting Chief of Development Review....i wonder if this is old and if Michael Ma has replaced him recently

Subj: **RE: Follow-Up**
 Date: 10/1/2004
 To: john.carter@mncppc-mc.org
 CC: smithcar@mail.nih.gov, Shileykim@aol.com

Hello, John.

Kim, Carol and I would like to speak with you today, if possible, to discuss some pressing issues relative to the concerns we presented at our last meeting with you, Wynn, Nellie, and Susan. For your review, we have forwarded the response we received from Wynn Witthans regarding our specific questions on the action items she agreed to handle. (Our comments are in blue.)

We would greatly appreciate it if we could discuss these and a few other items with you today. We would be available any time between 2:30-4:30 for a conference call. Please let us know what time would work for you. (I will forward a conference dial-in number to all shortly.)

Subj: **FW: follow up**
 Date: 9/30/2004 3:28:38 PM Eastern Daylight Time
 From: shileyk@mail.nih.gov
 To: synergiesinc@aol.com, smithc@efdb.nci.nih.gov
Sent from the Internet (Details)

——Original Message——

From: Witthans, Wynn [<mailto:Wynn.Witthans@mncppc-mc.org>]
 Sent: Thursday, September 30, 2004 3:04 PM
 To: Shiley, Kimberly (NIH/NCI)
 Subject: RE: follow up

Kim -

Please let me clarify your summary of our quick phone call -

1. We have followed up on the request for more info re the height of the Buzzuto condos. We are waiting for more information from the developer. Our understanding was that Wynn agreed to have a zoning enforcer sent out to the site to determine the height and review that against the project plan requirements. It seems odd to try to get this information from the developer. Nellie advised that we could make the request directly to Michael Ma to have a zoning person sent out, but based on Wynn's response, we are unsure how to proceed. Additionally, Nellie mentioned that the height limits are recorded on the site plan attached to the Project Plan with Board approval. We are having difficulty determining exactly which plan should be used as the final reference

here.

2. The diagonal street was part of the project plan and was, at one time, proposed to be a pedestrian mews. It is now approved as a street, per the original project plan. We are unclear as to why Wynn references the original plan when necessary to support the developer changes, but not to support (in our opinion) the intent of the Master Plan. On the original plan, we do see a street, but not breaking up the mews as we feel is being done now. We thought that you and all of those present at our meeting at M-NCPPC agreed that the pedestrian mews as originally planned, with an unbroken church vista, was what was expected from the developer. We need clarification on this point. The pool is not within the street, but is within the block. It should not block any views between the church and central green.

The pool was at one time integrated within the multifamily units - it's proposed location (across the street) places it more centrally within the subdivision. Let's talk further about this with a drawing in front of us, so I can better understand what your concerns are. Again, we would like your clarification on this and your opinion as to current placement with reference to the church vista.

3. I had a lengthy conversation with John Carter this week with your list of questions/concerns in front of us. John asserted to me, as he feels he has done in public meetings, that the Project Plan provides one level of design. This level of design is amended and modified by subsequent (more detailed) site plans as long as the modifications to the Project Plan reinforce the essential principles of the Project Plan. Within this understanding is a degree of flexibility (or "morphing" as we discussed earlier) which can sometimes lead to differences of opinion. It seemed quite clear to us that you expressed a desire to see the developer return to the original project plan relative to the town square and streetscapes - i.e. layout/types of buildings, and as you mentioned, even "down to the number of awnings", etc. We would like to know how much flexibility is afforded the developer under the "morphing" principle. This seems too vague to us and we would like to know the parameters. As a combined staff, whether in the Development Review division or the Community-Based Planning division, we expect the Project Plan will be upheld through subsequent approvals. We are already seeing that the project plan is not being upheld to the degree we feel necessary... we see loopholes being created through approval of certain amended plans. We need assistance in determining how to help M-NCPPC ensure that the Master Plan and integrity of the concept are upheld.

It would be very helpful to discuss these points with you, and to get your feedback on these issues. With the notion of allowable "morphing," we have

growing concern relative to the newly proposed hearing date of Oct. 28 for the West side of the Town Square/Phase 1A approval. Since Newland will be unable to present new concepts to us for the East side/Retail section prior to that date, and knowing that "morphing" allowances seem to be acceptable, we fear that the "compatibility" and "cohesiveness" you stressed as required for the Town Square will be abandoned through an ambiguous approval process.

Once again, thank you for your time in assisting us. Please give me or Kim a call to confirm your availability for a conference call.

Regards,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

I hope this helps.

Wynn E. Witthans
Development Review Division, M-NCPPC
8787 Georgia Avenue, Silver Spring MD 20910-3760
Site Plan Review
(301)495-4584
mailto:Wynn.Witthans@mncppc-mc.org

-----Original Message-----

From: Shiley, Kimberly (NIH/NCI) [mailto:shileyk@mail.nih.gov]
Sent: Monday, September 27, 2004 5:59 PM
To: Witthans, Wynn
Cc: Carter, John; Maskal, Nellie; Edwards, Sue; 'synergiesinc@aol.com';
Smith, Carol Leigh (NIH/NCI)
Subject: follow up

Wynn,

Thank you for taking the time to speak with me today concerning the issues I submitted via email. Confirming our conversation today, I understand that:

- You will not be following up further through your office relative to project building height verification; You would like us to contact the developer (Newland) directly regarding the height issues and for any documentation or validation of height requirements and compliance.

- Regarding the church vista and view as initially proposed in the Master & Project Plans and shown in the Phase 1 Site Plan (specifically relative to the "diagonal pedestrian mews" - from a lawn mews to a street mews -as supporting the initially planned church vista), and the placement of the community pool in that diagonal pedestrian mews, you maintain that those issues were already discussed and that the current development plans seem acceptable in your opinion. Although I mentioned that this seemed to me to be contrary to what was expressed by John Carter and all present at our meeting with M-NCPPC on August 21, you acknowledged that we have a difference of opinion on this issue.

- Regarding the changes to the approved project plan relative to the location of the multifamily units, single family attached and recreation areas, you maintain that the Project Plan merely showed a "series of sample blocks" and that the initial locations on the Project Plan are not binding. When reminded of the concern that condominiums were suggested to be placed above the retail/office space on Mainstreet, you stated "we can talk about that", as you believe the developer to be working within the guidelines of the Project Plan.

I do not believe our conversation overall, was in keeping with the information we discussed with John Carter, Nellie Maskal, Susan Edwards and you at our meeting of August 21. However, I will attempt to convey the information accurately to the CTCAC and determine from there how we can proceed on these issues.

As I mentioned, Newland is meeting with our CTCAC board, along with their new architect/designer, on October 12 to discuss our input relative to the Commercial/Retail section. Although I do not feel that it is appropriate for the CTCAC to acquire the information from Newland regarding their compliance with height issues, etc., I will present your suggestion and opinions on that to the CTCAC and get back to you if we require further information, validation or assistance from your office.

Thank you,
Kim Shiley

* CONFERENCE CALL WAS
HELD W/ JOHN CASTER
TO DISCUSS THIS.

very curious myself.

Su **RE: follow up**
Da 10/1/2004 9:45:31 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com, shileyk@mail.nih.gov
Sent from the Internet (Details)

Stab away Amy!!!

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]
Sent: Friday, October 01, 2004 9:40 AM
To: Smith, Carol Leigh (NIH/NCI); Shiley, Kimberly (NIH/NCI)
Subject: Re: follow up

Exactly my thoughts, Carol. We should do this by sending to him the copy of Wynn's email and then restating what we believed him to say. We also need to make clear that we are a little disturbed by the ambiguous references to the project plan being able to "morph" at site plan submittal..... let's get an official M-NCPPC definition of the importance and binding aspect of the project plan. . . Kim, care for me to take a stab at the response?

Su **RE: follow up**
Da 10/1/2004 11:42:48 AM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To smithc@efdb.nci.nih.gov, Synergiesinc@aol.com
Sent from the Internet (Details)

more:

Sec. 59-D-3.4. Action by Planning Board.

(a) A public hearing must be held by the Planning Board on each site plan application. The Planning Board must approve, approve subject to modifications, or disapprove the site plan not later than 45 days after receipt of the site plan, but such action and notification is not required before the approval of a preliminary plan of subdivision involving the same property. The Planning Board then must notify the applicant in writing of its action. In reaching its decision the Planning Board must determine whether:

(1) the site plan is consistent with an approved development plan or a project plan for the optional method of development, if required;

Su **Lunch Date w/ Nancy FLoreen**
Da 10/1/2004 2:08:23 PM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To shileyk@mail.nih.gov, Synergiesinc@aol.com
Sent from the Internet (Details)

Hi girls

We have a lunch date with Nancy Floreen. Wednesday Oct. 20th at 12:30. I may push for a little earlier. Can you both make it?

Su **RE: Conference Call Dial-in Information**
Da 10/1/2004 2:09:43 PM Eastern Daylight Time
Fr smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com
Sent from the Internet ([Details](#))

What time??????

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]

Sent: Friday, October 01, 2004 1:08 PM

To: john.carter@mncppc-mc.org

Cc: Smith, Carol Leigh (NIH/NCI); Shileykim@aol.com

Subject: Conference Call Dial-in Information

Hello, All.

I have provided a conference call dial-in number below. This should be active all day, so whatever time we confirm will be fine.

John - I neglected to invite Nellie on the call, but please do so if that's appropriate and she's available.

Conference Call Info:

Conference Call Number: 641-497-7324

Passcode: 931998

Subj: **Thank you**
Date: 10/13/2004
To: kambrose@newlandcommunities.com
CC: smithc@efdb.nci.nih.gov, jersub13@yahoo.com, rdefrehn@nccmp.org, JJackman@wtplaw.com,
timdearros@comcast.net, murfs@comcast.net, shileyk@mail.nih.gov, lpowell@cpja.com,
davidkitchens@coopercarry.com

Hello, Kim.

Just wanted to thank you for hosting the meeting last night. We appreciated the forum for idea exchange with David and Les, as well as the contributions from Rick and Todd. We were impressed by David's line of questioning, and his apparent ability to assimilate our diverse comments.

We believe we made good progress in communicating the residents' expectations relative to the Master Plan/Project Plan and understanding Newland's desire to work together to derive a mutually beneficial solution.

We look forward to meeting with you again on the 26th to have a look at some proposed solutions.

Sincerely,
Amy Presley, on behalf of the CTCAC

PS I did not have Rick's or Todd's email. Would you kindly forward this to them? Thank you.

Subj: Follow-up
Date: 10/13/2004
To: michael.ma@mncppc-mc.org
CC: Shileykim@aol.com, smithcar@mail.nih.gov, wynn.withthans@mncppc-mc.org

Hello, Michael.

Kim and I wanted to thank you for taking the time to meet with us on Monday. We appreciated your time in discussing our concerns, and your referral to Douglas Johnsen relative to ongoing site plan enforcement issues.

As discussed, we are most concerned with the deviations to Project Plan Guidelines which may be inherent in some of the site plans previously approved. Understanding that due to process gaps, potential oversights, and/or developer/builder submission errors, there could have been some erroneous approvals, we appreciate your willingness to review existing site plans to determine compliance with the Master Plan and Project Plan Guidelines. We will also be further reviewing the issues we discussed relative to placement of significant buildings and other potential deviations to initially proposed site designations for various residential, commercial and amenity locations.

As you suggested, we did get a copy of the Site Plan Enforcement Document from Wynn. Unfortunately, the document in her files was missing one page (Page 4), but she has agreed to get a copy of this for us. We were unable to find a copy of the approved site plan containing the Bozzuto condominium we discussed, and Wynn was only able to advise us that she confirmed with the developer that it was 4 stories (that the supplemental lofts do not count as a story). We appreciate your offer to follow up on the specific height issue relative to the 4-story/45' height limitation clearly designated within the Project Plan Guidelines vs. the Buzzoto condominium height which we are certain exceeds the limitation.

As you directed, we will be in touch with Douglas Johnsen to discuss our concerns and request zoning enforcement assistance. However, we remain concerned that if the zoning enforcement group is enforcing based on approved site plans, site plans which may have deviated from the Project Plan Guidelines, that they may actually be enforcing plans that go against the Master Plan and Project Plan intent. On this issue, we appreciate your further investigation.

Again, thank you so much for your time and attention. We will wait to hear from you regarding the height issue and will keep in touch regarding our progress with the developer.

Kind regards,

Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Subj: **Fwd: Follow-up**
Date: 10/13/2004
To: nellie.maskal@mncppc-mc.org
CC: john.carter@mncppc-mc.org, susan.edwards@mncppc-mc.org, smithcar@mail.nih.gov,
Shileykim@aol.com

Hello, Nellie.

Thanks again for taking time to meet with us on Monday, and for your referral to Michael Ma. We spent time with Michael reviewing our concerns and enlisting his help. He has committed to assisting us and, specifically, to looking into the specific height deviation we believe exists with the Bozzuto condominium. For your information, I am forwarding to you the follow-up email as sent to Michael. I meant to add your name to the email directly, but hit "send" too soon. We will copy you, John and Susan on future emails and correspondence so that you can remain aware of our efforts within that department.

We met with Newland last night, along with their architect, David Kitchen of Cooper Carry. We feel that they were sincere in their desire to hear from the residents as to what was expected for the town square look and feel, as well as our issues regarding the "box" retail center and deviations from the Master Plan intent. They have committed to meet with us again on October 26 to present their redesign concepts. However, based on some of their language pertaining to "grading issues," "engineering issues" and "marketing issues" we remain uncertain as to what they will present relative to the grocery store location and surrounding pedestrian accommodation.

Please feel free to call me or Kim or Carol if you would like more detail on our meeting with Newland. We are trying to keep open minds in the process, but are insistent upon holding to the heart and intent of the Master Plan.

Again, thanks so much for meeting with us, and for all the time you have spent on the project in general. We greatly appreciate your efforts and willingness to educate us in the process.

Sincerely,

Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Su **FW: Clarksburg Town Center - Tax Burden**
Da 10/13/2004 9:34:57 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To shileyk@mail.nih.gov, Synergiesinc@aol.com
CC timdearros@comcast.net, JJackman@wtplaw.com, rdefrehn@nccmp.org, iersub13@yahoo.com,
murfs@comcast.net, nnagda@ENERGENconsulting.com
Fil Clarksbu (10032 bytes) DL Time (TCP/IP): < 1 minute
Sent from the Internet ([Details](#))

Hi All,

Better late than never I suppose. Doug Duncan just responded to my email from July 27th. I spoke with Nancy Hislop yesterday and she and I most likely will talk today as she is very interested in what is happening. She is the Asst. Director of the Upcounty Regional Services Center and reports to Catherine Matthews. I think Duncan is only informed through Matthews who is informed through Nancy Hislop who does the grunt work. She is the one who attends our meetings and the CCA meetings.

If you feel we should respond to this email let's get something together today and get it fired off so Mr. Duncan can respond by Christmas.

Carol

-----Original Message-----

From: Duncan, Douglas [mailto:Douglas.Duncan@montgomerycountymd.gov]
Sent: Tuesday, October 12, 2004 4:13 PM
To: Smith, Carol Leigh (NIH/NCI)
Subject: RE: Clarksburg Town Center - Tax Burden

Dear Ms. Smith:

Thank you for your e-mail regarding the revised plans for the Clarksburg Town Center retail development. I apologize for the delay in responding.

I have been made aware, through Catherine Matthews, Director of the Upcounty Regional Services Center, that your citizens' group has had meetings with both the Maryland-National Capital Park and Planning Commission and Newland Development to air your concerns and to discuss the means by which this situation may be remedied. I also know that Newland is in the process of redesigning the retail parcel to better realize the original vision for that area and is working with your group to come to a mutually satisfactory design.

We do want the Clarksburg Town Center to be a "centerpiece of Montgomery County's last planned development along the I-270 Corridor" and I encourage you to continue communicating with the developer and our upcounty staff. Please be assured that I will continue to follow these developments. If you have further concerns or questions, please contact Ms. Matthews at 240-777-8000.

Thank you for your continuing interest in making sure that Clarksburg is a community where residents are proud to live, work and raise a family.

Su **RE: Clarksburg Town Center - Tax Burden**
Da 10/13/2004 9:43:18 AM Eastern Daylight Time
Frc JJackman@wtplaw.com
To smithc@efdb.nci.nih.gov, shileyk@mail.nih.gov, Synergiesinc@aol.com
CC timdearros@comcast.net, rdefrehn@nccmp.org, iersub13@yahoo.com, murfs@comcast.net,
nnagda@ENERGENconsulting.com

Sent from the Internet (Details)

I have to say - - I am not very impressed by his response. For someone who took almost 3 months to respond, you would think he would have had more to say. He (or someone in his office) has definitely been in contact with Newland as is evidence by his statement that "I also know that Newland is in the process of redesigning the retail parcel to better realize the original vision for that area and is working with your group to come to a mutually satisfactory design".

If we respond, I would state something along the lines of we hope that a mutually satisfactory design is accomplished and that any approved design must strictly comply with the Master Plan.

What do you think>

Su **RE: Clarksburg Town Center - Tax Burden**
Da 10/13/2004 12:26:43 PM Eastern Daylight Time
Frc rdefrehn@nccmp.org
To smithc@efdb.nci.nih.gov, TD100001@ncr.com, JJackman@wtplaw.com, shileyk@mail.nih.gov,
Synergiesinc@aol.com
CC timdearros@comcast.net, iersub13@yahoo.com, murfs@comcast.net,
nnagda@ENERGENconsulting.com

Sent from the Internet (Details)

Good morning, Everyone!

Busy e-mail morning for all, I see!

Adding my 2 cents on this last night's meeting, Duncan's reply and this morning's discussions:

I think that yesterday's meeting went about as well as we could have expected. Although Kim Ambrose wasn't entirely successful at restraining her resentment about the process, the others seemed more mellow and fact that they brought their architect in to listen to our concerns appears to be a good start. Whether or not that was simply a smart maneuver to show the county how responsive they are to these "unreasonable" demands of the residents at some future date remains to be seen. We'll all know better when we see what David comes up with by the 26th. If the Giant deal is really a driver, his revised drawings will still include a 63,000 square foot grocery store not considerably different from the original designs. Recalling that everything is a negotiation and Rick's comments that there will be things we don't like and things they don't like, the end result should at very least include some movement to make the Town Center area more pedestrian friendly, and a more inviting retail area. I like the phrase "Come and Stay" and think we should continue to use that as a theme.

With respect to Doug Duncan's reply, I read it as an effort to sidestep the (taxation) issue you raised by a guy who is looking to a run for Governor the next time around, who doesn't really have strong feelings about what happens in Clarksburg as long as he doesn't alienate anyone in the developer community - especially those who may play an important part in financing that future campaign. We should continue to nurture the relationship with John Carter who has a genuine interest in making this project a success and play hardball with Newland with respect to the Master Plan only after (or if) it becomes clear that their best and final offer is not going to be acceptable to those of us who, as Carol said, will be left to live there after the developer is long gone.

Finally, with respect to the article on Newland's intent to proceed despite the opposition from the community, that is what they would expect to do in the face of the "run-of-the-mill" opposition. Given how thorough and extensive your efforts have been at not only researching what they should have done in the first place, but finding the

political pressure points in the approval process, I don't think that even in their most optimistic moments they actually believe that could happen -- explaining my earlier observation about Kim Amborse's frustration at not being able to move along at the pace they wanted. You have all been extremely effective in the work put in to date. The best thing to do now is to keep applying the pressure.

See you on the 26th, if not before.

Best regards,

Randy

Su
Da 10/13/2004 3:04:14 PM Eastern Daylight Time
Fr smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com, shileyk@mail.nih.gov
Sent from the Internet (Details)

How come nobody in that whole room last night could tell us how high a 2 over 2 is???? Sounds like a p.s. to Michael Ma.

Carol Leigh Smith

Su I need to send this before 5:00.
Da 10/13/2004 4:18:26 PM Eastern Daylight Time
Fr smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com, shileyk@mail.nih.gov
Sent from the Internet (Details)

Hi David

It was nice to meet you last evening. Our group was impressed with the questions you asked and your knowledge of new urban design. Bethesda Row is one of our favorite spots to frequent. In fact, many of our group went there last night after our meeting. If we could get the same "come and stay" feel in the Clarksburg Town Center that Bethesda Row has (on a smaller scale) we will be extremely pleased. We are looking forward to getting together again on October 26. In the meanwhile should you have any questions or need any additional information from us we can be reached at the following numbers:

Kim Shiley 301-435-5347 (office) or 301-515-0144 (home)
Amy Presley 301-916-7969 (office) or 301-526-7435 (cell)
Carol Smith 301-435-5215 (office) or 240-472-3742 (cell)

Carol Smith
301-435-5215

Su **Everyone's thoughts on one page.**
Da 10/13/2004 4:43:51 PM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com
CC shileyk@mail.nih.gov
Sent from the Internet ([Details](#))

Amy:

I agree with those thoughts, Jen. Also, I would ask specifically what Doug's office intends to do to ensure compliance with Project Plan Guidelines. I would request that they investigate current processes which enable loopholes and allow for deviations through the site planning process. I would ask whether his office is concerned that the potential exists for Clarksburg to go the way of Germantown if not closely monitored. I would ask what his opinion is relative to Giant becoming a monopoly and whether he has been made aware that the residents don't want 10 Giant Food stores within a 5 mile radius!!! (okay, a bit sarcastic and I wouldn't word any of it the way I just did).

What does everyone else think?

Carol:

Given what was said in the meeting last night shouldn't we say "any approved design must strictly comply with the spirit of the master plan or are we still demanding a return to the master plan. The master plan has serious flaws. If David Kitchen can come up with a more desirable plan I'd rather see that first. thoughts?

Tim:

I concur. Simply adding "spirit of..." is most likely going to work better.
All negotiations and efforts with Newland after they deal with us still need County Approval, which is where we have the most power/leverage.

I believe we need to be flexible with Newland, to a degree, but watch everything CAREFULLY.

Randy:

Good morning, Everyone!

Busy e-mail morning for all, I see!

Adding my 2 cents on this last night's meeting, Duncan's reply and this morning's discussions:

I think that yesterday's meeting went about as well as we could have expected. Although Kim Ambrose wasn't entirely successful at restraining her resentment about the process, the others seemed more mellow and fact that they brought their architect in to listen to our concerns appears to be a good start. Whether or not that was simply a smart maneuver to show the county how responsive they are to these "unreasonable" demands of the residents at some future date remains to be seen. We'll all know better when we see what David comes up with by the 26th. If the Giant deal is really a driver, his revised drawings will still include a 63,000 square foot grocery store not considerably different from the original designs. Recalling that everything is a negotiation and Rick's comments that there will be things we don't like and things they don't like, the end result should at very least include some movement to make the Town Center area more pedestrian friendly, and a more inviting retail area. I like the phrase "Come and Stay" and think we should continue to use that as a theme.

With respect to Doug Duncan's reply, I read it as an effort to sidestep the (taxation) issue you raised by a guy who is looking to a run for Governor the next time around, who doesn't really have strong feelings about what happens in Clarksburg as long as he doesn't alienate anyone in the developer community - especially those who may play an important part in financing that future campaign. We should continue to nurture the relationship with John Carter who has a genuine interest in making this project a success and play hardball with Newland with respect to

Subj: **Re: FW: Clarksburg Town Center**
Date: 10/15/2004
To: kathie@FentonTitle.com
CC: Shileykim@aol.com, smithcar@mail.nih.gov

Hello, Kathie.

Thank you so much for sending that letter. Kim may have told you about our meeting with Michael Ma on Monday. We are still awaiting a response from him with respect to the actual height of the Bozutto condos and the height listed on the approved site plan (we were unable to obtain a copy of the site plan on Monday). We discussed with him the procedural problem that may exist with the site plan approval group potentially overlooking or not ensuring adherence to the project plan guidelines.

For your information, I have pasted below a copy of the follow-up email we submitted to Michael Ma after our meeting. I would be happy to give you further details if you would like to chat about it or provide your thoughts on next steps with his department.

Thanks again and look forward to speaking with you,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Subj: **Follow-up**
Date: 10/13/2004 12:51:26 PM Eastern Daylight Time
From: Synergiesinc
To: michael.ma@mncppc-mc.org
CC: Shileykim, smithcar@mail.nih.gov, wynn.witthans@mncppc-mc.org

Hello, Michael.

Kim and I wanted to thank you for taking the time to meet with us on Monday. We appreciated your time in discussing our concerns, and your referral to Douglas Johnsen relative to ongoing site plan enforcement issues.

As discussed, we are most concerned with the deviations to Project Plan Guidelines which may be inherent in some of the site plans previously approved. Understanding that due to process gaps, potential oversights, and/or

developer/builder submission errors, there could have been some erroneous approvals, we appreciate your willingness to review existing site plans to determine compliance with the Master Plan and Project Plan Guidelines. We will also be further reviewing the issues we discussed relative to placement of significant buildings and other potential deviations to initially proposed site designations for various residential, commercial and amenity locations.

As you suggested, we did get a copy of the Site Plan Enforcement Document from Wynn. Unfortunately, the document in her files was missing one page (Page 4), but she has agreed to get a copy of this for us. We were unable to find a copy of the approved site plan containing the Bozzuto condominium we discussed, and Wynn was only able to advise us that she confirmed with the developer that it was 4 stories (that the supplemental lofts do not count as a story). We appreciate your offer to follow up on the specific height issue relative to the 4-story/45' height limitation clearly designated within the Project Plan Guidelines vs. the Buzzoto condominium height which we are certain exceeds the limitation.

As you directed, we will be in touch with Douglas Johnsen to discuss our concerns and request zoning enforcement assistance. However, we remain concerned that if the zoning enforcement group is enforcing based on approved site plans, site plans which may have deviated from the Project Plan Guidelines, that they may actually be enforcing plans that go against the Master Plan and Project Plan intent. On this issue, we appreciate your further investigation.

Again, thank you so much for your time and attention. We will wait to hear from you regarding the height issue and will keep in touch regarding our progress with the developer.

Kind regards,

Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Su **FW: ctc**
Da 10/18/2004 2:35:45 PM Eastern Daylight Time
Fr shileyk@mail.nih.gov
To Synergiesinc@aol.com
Sent from the Internet (Details)

Just passing on; Kathie talked with wynn also; she just doesn't understand why we're making the height an issue.... "it's four stories and that's what was approved"; Kathie said, yes wynn but there's a limitation to the height of those four stories....wynn's comment below about asking developer/builder. We need to get that inspector out there asap!

I talked with Kathie a bit about the most recent comments and she's concerned...said that's what happened in Germantown...people were frustrated and just wanted some sort of retail....forgetting the big picture.

Well, just wanted to pass along
kim

-----Original Message-----

From: Kathie Hulley [mailto:kathie@FentonTitle.com]
Sent: Monday, October 18, 2004 10:12 AM
To: Shiley, Kimberly (NIH/NCI); Krisna_Becker@hgsi.com; Paul (and/or Mary) Majewski
Subject: FW: ctc

From: Witthans, Wynn [mailto:Wynn.Witthans@mncppc-mc.org]
Sent: Monday, October 18, 2004 10:03 AM
To: Kathie Hulley
Subject: ctc

Kathie - I have inquired about the height of the Buzzoto condo buildings from the developer. They have not given me the height of the buildings. When the second phase of the Clarksburg Town Center went to the Planning Board, they were approved for 4 stories, which the buildings are (as measured from the front doors). We are waiting for the builder to give us the actual height of the buildings and then will get back in touch with you further. Thanks for your interest.

Wynn E. Witthans

Su **RE: CTC**
Da 10/19/2004 1:26:34 PM Eastern Daylight Time
Frc shileyk@mail.nih.gov
To JJackman@wtplaw.com, smithc@efdb.nci.nih.gov, iersub13@yahoo.com, rdefrehn@nccmp.org,
timdearros@comcast.net, murfs@comcast.net, nnagda@ENERGENconsulting.com,
synergiesinc@aol.com

Sent from the Internet (Details)

greetings all :)

just want to remind/udpate everyone:

tomorrow, Amy, Carol and I will be having lunch with Nancy Floreen, At-large Councilmember; we met her at the CCA general meeting and she expressed an interest to meet with us; her statement to Newland at that meeting..."this better not be another strip mall"

then in the evening, Mike Knapp is having his town hall meeting for all of Clarksburg. We put out a flyer stating 7pm; but it looks like Mr. Knapp won't be there until 8pm; however, we CTCAC could use that hour to talk with the residents of CTC.

Amy has received several phone calls from P&P; action items (ie. height issues) are being addressed.

Carol has received emails from Nancy Hislop; it looks like Newland will be meeting with her, folks from the library, traffic and upcounty regional services on the 26th as well; in fact, right before our meeting with them.

So, there's still much work to do; so many people have been involved with the making of Clarksburg and Clarksburg Town Center. Countless hours and years have gone into preparing the Master Plan, Project Plan and Preliminary Plan. So many folks from the community, P&P and County Council are counting on us (CTCAC) to push forward and to make the vision a reality.

hope to see you all tomorrow night. we should also try to have a conference call or a quick briefing before the 26th.

kim :)

Su **RE: CTC**
Da 10/20/2004 9:04:56 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To nnagda@ENERGENconsulting.com, shileyk@mail.nih.gov, synergiesinc@aol.com

Sent from the Internet (Details)

Hi Niren,

The meeting is tonight at 7:00 at the Firehouse in Hyattsville. Mike Knapp will be there at 8:00 to hold an open forum and answer questions for all Clarksburg residents. We found out yesterday that John Carter and Nellie Maskal intend to come as well as Nancy Hislop from the Upcounty Regional Services Center. We delivered flyers door to door to make sure our community knows about the meeting. At the time we were told Mike Knapp would be there at 7 p.m. It is his meeting and he changed it to 8:00 after the flyers went out. We thought we could use the hour before to update the community about all that has happened since the Sept. 16 community meeting.

Su **RE: Clarksburg**
Da 10/20/2004 9:28:40 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To ADitchey@z-techcorp.com
CC Synergiesinc@aol.com, shileyk@mail.nih.gov

Sent from the Internet (Details)

Hi Adrienne,

Thank you for the generous offer. I know how valuable your time is. Kim, Amy and I sometimes think this has become a full-time job for us. We do appreciate your offer and would appreciate it if you could take notes at any of the meetings that the CTCAC or community attends regarding the Clarksburg Town Center. As far as writing up the minutes, we would be happy with a simple bullet style format. If you want to get more detailed that's great but we just want to get the basic facts down. We just found out that John

Follow-Up / Mike Knapp

10/21/2004 3:56:38 PM Eastern Daylight Time

Josh.Bokee@montgomerycountymd.gov

synergiesinc@aol.com

Daniela.Moya@montgomerycountymd.gov

Sent from the Internet ([Details](#))

Amy –

It was nice to see you again last night at the Clarksburg meeting. Mike would like to set up a time to get together with both yourself, Carroll and Kim (and if there is anyone else who you think appropriate, but still keeping it very small) to talk and follow-up on some of the issues that were raised last night (and previously). Perhaps over coffee, lunch, breakfast? Whatever might work best in trying to coordinate multiple schedules.

I have cc'd Daniela Moya, who handles Mike's schedule here in the office. If this is something you and the others are interested in, feel free to contact her at 240-777-7955.

Thanks and if I can be of assistance with anything just let me know.

Joshua L Bokee

Aide to

Councilmember Mike Knapp

Montgomery County Council

100 Maryland Avenue

Rockville, MD 20850

240-777-7947 O

240-777-7989 F

Re: what else ??

10/25/2004

Shileykim

Hi, again, Kim.

Will send this email asap ... as well as a similar one to Douglas Johnsen (MN-CPPC). Doug is aware of these issues (I left several messages for him last week) and requested that I also follow-up in writing.

Was innundated this morning with other work, but will send both emails ASAP.

Thanks,
Amy

Su **RE: Clarksburg Town Center, and all Up-County Residents.**
Da 10/25/2004 10:40:13 AM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To timdearros@comcast.net, shileyk@mail.nih.gov
CC jersub13@yahoo.com, shileyk@mail.nih.gov, JJackman@wtplaw.com, rdefrehn@nccmp.org,
 murfs@comcast.net, nnagda@ENERGENconsulting.com, synergiesinc@aol.com
Sent from the Internet (Details)

Hi All

The list was of all the residents who have given us their emails. There were some on the list that have signed in at meetings but didn't give an email address and only a phone number. I got some of the addresses from the tax records and of course they have no emails and there are plenty more to get from the tax records. I only got a few streets. This is an ongoing project and our ultimate goal is to send word of meetings via email. I don't mind the door to door thing but it will be getting a bit nippy out soon.

Thanks again Tim. Great work.
Carol

Su **RE: meeting with Newland 26 October**
Da 10/25/2004 2:31:31 PM Eastern Daylight Time
Frc smithc@efdb.nci.nih.gov
To Synergiesinc@aol.com, shileyk@mail.nih.gov, JJackman@wtplaw.com, jersub13@yahoo.com,
 rdefrehn@nccmp.org, timdearros@comcast.net, murfs@comcast.net,
 nnagda@ENERGENconsulting.com
Sent from the Internet (Details)

Don't expect me to keep quiet about those damn 2 over 2's. I want to know the height. They have stalled long enough. Don't tell me nobody knows how tall they are. B.S.

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]
Sent: Monday, October 25, 2004 12:56 PM
To: Shiley, Kimberly (NIH/NCI); JJackman@wtplaw.com; Smith, Carol Leigh (NIH/NCI); jersub13@yahoo.com; rdefrehn@nccmp.org; timdearros@comcast.net; murfs@comcast.net; nnagda@ENERGENconsulting.com
Subject: Re: meeting with Newland 26 October

Hello, Kim and all.

Of course, I will be going to the Newland meeting tomorrow at 4pm. Also, Kim, I agree with EVERY point you made relative to the grocery store sq. footage and other points regarding the Master Plan/Project Plan.

In my opinion, we should view the new design(s) they present, reserve any "final" response until we are able to share the drawings with our entire CTCAC/CTC residents, but continue to reinforce our points regarding scale and Master Plan/Project Plan Guidelines.

Do we need a conference call, or are we all pretty much in agreement as to how to handle the meeting tomorrow?

Thoughts?

Amy

Meeting Tomorrow

10/25/2004

kambrose@newlandcommunities.com

Shileykim@aol.com; smithcar@mail.nih.gov, nellie.maskal@mncppc-mc.org,
john.carter@mncppc-mc.org, michael.ma@mncppc-mc.org, wynn.witthe@mncppc-mc.org,
douglas.johnsen@mncppc-mc.org

Hello, Kim.

Wanted to confirm with you our meeting tomorrow at your office at 4:00pm. We are looking forward to reviewing the new conceptual plans that David Kitchens has designed for the Retail and Town Square area.

On a separate note, we would like to get copies from you of the architectural elevations and site plans for the Bozutto condos (existing) and the 2over2's (under construction). We would specifically like verification of the heights for these buildings (not in "stories" but in "ft."), as well as heights of structures planned for Section 3. Your assistance in making these available to us at the meeting would be greatly appreciated.

Thanks and look forward to seeing you tomorrow,

Amy Presley

CTCAC Meeting

Friday, October 29, 2004, 7 pm

1. Welcome and purpose/objectives for this meeting
2. Update from Parks and Planning and meeting with Mike Knapp
3. Observations from the meeting with Newland held on Oct 26th (not including the discussion on the specific options, which is Item 4 below). Building height issue and the response we gave them.
4. Description and discussion of two options presented by David Kitchens, an architect for Newland. Parameters given to us: about 60k sq ft grocery store, up to 90k sq ft of other retail space, and up to 100k sq ft of office space. Prepare/summarize our response for handing over to Newland on Monday.
5. Preparation of a list of bullets encompassing all issues of concern to us (requested by Newland)
6. Other issues
 - a. Need and siting of Clarksburg fire station
 - b. Use of public-use space (civic building) in the town center area—Library?
7. New business
8. Adjourn

Retail Center

10/31/2004

kambrose@newlandcommunities.com

kambrose@newlandcommunities.com, Shileykim@aol.com, smithcar@timdearros.comcast.net, rdefrehn@nccmp.org, jjackman@wtplaw.com,
nnaqda@energenconsulting.com, murfs@comcast.net

Hello, Kim.

- Wanted to give you an update on the CTCAC review process relative to the Town Square retail options Newland presented last week. We are meeting with our CTCAC during the week, but will not be able to respond with our comments by tomorrow. We will do our best to respond promptly -- hopefully by end of week.

In the interim, we are also preparing our full "list of issues" as requested by Rick. As you know, we have not yet received information on and are still very concerned with the height of existing Bozzuto condos, as well as heights planned for the 2over2's and additional condos. There are other issues, as discussed at our August 26 meeting, but we will include those in our list. We will send the list to you as soon as possible. (It would be helpful if you could provide Rick's email address.)

Please feel free to call me, Kim or Carol if you have questions.

Thanks,
Amy Presley

Meeting Follow-up

11/8/2004

wynn.witthans@mncppc-mc.org

john.carter@mncppc-mc.org, nellie.maskal@mncppc-mc.org, michael.m.mc.org, susan.edwards@mncppc-mc.org, smithc@efdb.nci.nih.gov, sendtriciamessages@msn.com, shileyk@mail.nih.gov, nnagde@ENERGENconsulting.com, jersub13@yahoo.com, rdefrehn@r, timdearros@comcast.net, Lfantle@aol.com, cariandjeff@comcast.net, murfs@comcast.net, JJackman@wtplaw.com

Hello, Wynn.

First, I would like to apologize for my absence at the meeting on Friday. I had an emergency on a client project and was not able to break away.

Kim and Carol gave me the update regarding the meeting and, specifically, the discussions relative to the height violations. I must tell you that I was disturbed to hear that you would attempt to position the buildings in question as acceptable based on a "four story" height limitation, when the Project Plan Guidelines specifically define the height limitation as 45' for residential. We certainly expected that M-NCPPC would not only be aware of the guidelines, but would diligently ensure adherence to such.

I am in agreement with Kim, Carol and the other CTCAC representatives on all points they discussed with you regarding the violation of the height restrictions. The CTCAC unanimously agrees that buildings exceeding the height restrictions in the project plan guidelines must be altered to comply.

We must also have assurance from M-NCPPC that existing approved site plans that are in violation of Project Plan guidelines (conditions and findings) will also be addressed with the Board and appropriately rectified with the developer. Further we would expect that more stringent attention will be given to future site plan reviews to ensure adherence to all Project Plan conditions and findings. The CTCAC representatives present at the meeting were pleased to hear your assurances on these issues. Please advise us of your action plan for handling the existing site plan violations.

We appreciated the discussion of the general design of the retail center. The experience and insights of the M-NCPPC staff on this is very valuable to us. Regarding the library issue, which was also discussed, we share your desire for further exploring the use of public-use space. There may well be an alternative for the library site (such as within the retail center area, perhaps in lieu of the bank?) that could eliminate the current parking concerns. We are happy to explore that further.

We remain quite concerned regarding the retail center area and, especially, the supplemental excavation currently planned by Newland. We appreciate your ongoing assistance in addressing this issue and ensuring that we don't wind up with artificially steep grading.

Overall, the CTCAC greatly appreciates the assistance received to date from all departments within M-NCPPC. We understand the difficulty associated with multiple reviews and approvals of site plans for a development as significant as Clarksburg Town Center. We will continue to be involved in the active support of the Master Plan concept as we all strive to make the vision a reality.

Sincerely,

Amy Presley,
on behalf of CTCAC

November 8, 2004

Dear Kim:

We are pleased that David Kitchens is working with Newland Communities to offer design possibilities that may bring a resolution to our ongoing concerns. We appreciate that you have shared two of the potential design options with us. The entire CTCAC met on Friday, October 29, 2004 and the consensus is that neither option is satisfactory. Our concern continues to be that the dialogue with you and the designs you have presented to date continue to feature the "big box grocery store" strip shopping center format and the insertion of large residential buildings into the retail/office space. The same concerns that the residents found objectionable when originally presented to them last summer.

We are confident that Mr. Kitchens is capable of designing a retail center that meets the Master Plan objectives and the Project Plan conditions and findings. However, the pre-existing agreements with Regency Centers and their proposed tenants, presumably based on assumptions that a run-of-the-mill strip mall design would be acceptable, has limited both his ability to find a creative solution and the possibilities and options to be considered. We continue to be optimistic that an alternative design for a commercially viable retail center which integrates the urban design objectives described in the Master Plan and a small-town atmosphere can be found. We have included specific suggestions to accomplish that objective.

However, before we offer comments and suggestions on the two design options, we would like to reiterate below the height issues. We await your response and require detailed clarification on the height issues from you.

Height Issues

In our meeting of August 26, 2004, the issue of the height of the existing condominiums with reference to the 45' height restriction in the approved Project Plan was raised, as was the height of the proposed two over two townhouse condominiums. Over the last two months, while we have repeatedly asked, we have not received specific answers or architectural drawings that clarify the height issues. We know that such information should be readily available with your architectural and engineering staff and/or subcontractors.

The simple fact that our request has not been met leads us to conclude that there could be a problem. With respect to our serious concern with the height issues we want to stress again that the limits on heights, as approved in the project plan and pursuant to Chapter 59 of the Montgomery County code Project Plan must be met. Should these specified limits be exceeded in the construction to date that would

constitute a violation which (i) would require remedial action with reference to the offending existing structures and (ii) assurances from you and your subcontractors that such limits will be abided by in all current and future development in the Clarksburg Town Center.

Comments on Design Options

The general concept of a 60 ft. wide walkway, which could be made into an attractive, inviting area for pedestrians and for outdoor café seating, is appealing. However, as explained to us at the last meeting with you on October 26, 2004, the 60 ft. walkway located below the C-shape building, which is an extension of General Store Drive from the west, has an extreme grade. If we correctly recall, it was said that the drop was approximately 20 ft. over a linear length of about 150 to 200 feet of walkway. We are unanimous that we do not want such an extreme and artificial grade created. The topography of the area shows a drop of about 5 ft. over a similar length span.

We oppose the mix of uses presented in the C-shape building. Pursuant to Article 59-D.2.12 of the Montgomery County Code, the Project Plan specifies the locations and uses of buildings and structures. This area is designated as Retail/Office space only. Based on your proposal the C-shape building with its proposed mix of uses could be six stories from the parking lot view. Not only is this use not permitted, but this again goes back to the probability that this violates the height restrictions.

We do not believe a bank is necessary as it would only serve the population that belongs to that particular bank. A better use of the building would be for a stand-alone restaurant, other retail or relocated civic space/library. It is a generally accepted practice to establish bank services within a grocery store.

We are pleased with the orientation of buildings to streets on Clarksburg Square Road as this fosters the creation of a transit-and pedestrian-oriented neighborhood called for in the Master Plan.

The presentation of building pictures, two of which displayed curved corners, presents an architectural interest that is welcomed, as it appears to invite pedestrians from the town center into the retail area creating the "come and stay" atmosphere mentioned in our meetings with you.

The expanded street-oriented retail areas in Option 3 we view as a positive and the road to the retail from Clarksburg Square Road provides a more direct access for pedestrians, bicyclists and vehicles; these interconnected secondary streets are found in many older neighborhoods (also in keeping with the Master Plan).

The size and placement of the grocery store presents problems in both Options 1 and 3. Although Option 1 does not back to Stringtown Road and allows a more pedestrian friendly flow of truck traffic to and from the grocery store, it does however, break up the flow of strolling pedestrians along the area of the smaller shops. As discussed in the meeting with you, the retailer at the far end of the grocery store would not get much traffic and would be isolated from the other shops that face the open entrance area to the retail center from the town center. Likewise, Option 3 places the grocery store in a location that compromises the safety of pedestrians with no alternative exit for the delivery trucks except to pass in front of the grocery store.

We propose that the grocery's square footage be reduced in order to assure that the size and scale of the retail center are compatible with the Master Plans vision of the Town Center and to assure a compatible relationship to the Historic District.

With respect to the location of the grocery store, we are proposing that you consider locating this building so that it backs up to the retail stores that are street-oriented to Overlook Park Road or to the retail/office stores that are street-oriented to Clarksburg Square Road. A service road could run behind the row of retail shops and the grocer. This would serve to eliminate delivery traffic and would hide the back of the grocery store while placing street-oriented retail in a highly visible entrance to the retail center. Additional street-oriented retail could be added on either end of the grocer.

Another consideration might be to remove the free standing bank and move the grocery store closer to Overlook Park Drive allowing more space at the southwest side for trucks to turn around. This would eliminate the problem of trucks passing in front of the store in a pedestrian zone.

We propose locating the library above the grocery or other retail spaces, or where proposed bank is located as a trade for retail space in town square.

We also would like to remind you of the commitment we have to ensure the retail side is compatible and cohesive with the residential side. We propose that all buildings as well as all street corners have similar shape and/or continuity of design and height along Clarksburg Square Road as well as along Ebenezer Chapel Drive.

Also in reference to a recent letter sent to CTC residents by Property Management People, Inc., we believe that a meeting with residents in November

would be premature since there has not been a design presented that considers the recommendations and concerns of the community. To hold a meeting prematurely may possibly present the same confrontational atmosphere as the meeting of July 27, 2004 which would jeopardize the current constructive dialogue.

It is our hope that there can be more designs than option 1 (which resembles the Project Plan) and option 3 (which resembles your previous plan). We are committed to realizing a retail center that benefits the Clarksburg residents and surrounding communities, is consistent with the spirit of the Master Plan, the conditions and findings of the Project Plan and that is profitable to both the developer and retailers.

Sincerely,

The Clarksburg Town Center Advisory Committee (CTCAC)

Subj: **Fwd: Meeting Follow-up**
Date: 11/16/2004
To: wynn.witthans@mncppc-mc.org
CC: john.carter@mncppc-mc.org, nellie.maskal@mncppc-mc.org, michael.ma@mncppc-mc.org,
susan.edwards@mncppc-mc.org, smithc@efdb.nci.nih.gov, sendtriciamessages@msn.com,
shileyk@mail.nih.gov, nnagde@ENERGENconsulting.com, jersub13@yahoo.com, rdefrehn@nccmp.org,
timdearros@comcast.net, Lfantle, cariandjeff@comcast.net, murfs@comcast.net, JJackman@wtplaw.com,
synergiesinc@aol.com

Hello, Wynn.

We haven't heard back from your office yet regarding the action plan for height violations discussed at the meeting with the CTCAC and your team on November 5th. We would like to know specifically what actions the M-NCPPC is planning to take. We would also like to know whether the CTCAC should write to Derrick Berlage and the Planning Board to request action on this violation. Please include that information in your update to us. We would appreciate a response prior to the end of this week.

Thank you for your assistance with this matter.

Sincerely,
Amy Presley, on behalf of CTCAC

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

December 5, 2004

The Honorable Derick Berlage Chairman
Montgomery County Planning Board 8787 Georgia
Avenue Silver Spring, Maryland 20910

Dear Mr. Berlage:

It is with great interest in upholding the vision and intent of the Clarksburg Town Center Master Plan that we are writing to you. As you may recall, per the letter you received from our group in August, 2004, the CTCAC (Clarksburg Town Center Advisory Committee) was formed in response to the Town Center residents' discovery of deviations by the developer (Newland Communities) to the Master Plan concept and Project Plan Guidelines. The residents elected the CTCAC to represent them in taking action with MNCPPC and the developer to ensure adherence to the vision and intent of the Master Plan.

Since the CTCAC was elected in July, 2004, we have become very active in researching not only the intent of the Master Plan and approved Project Plan, but also the detailed parameters within the Conditions and Findings, as well as the processes within MNCPPC for site plan submission and approval. As part of our process, we have researched and read every document available on file with MNCPPC relative to Clarksburg Town Center. In doing so, we have made ourselves aware of all requirements under the "Optional Method" of development for the RMX2 zoning and the related requirements for complete compliance with the Conditions and Findings of the approved Project Plan #9-94004.

The CTCAC and residents are in full agreement with the Land Use Objectives of the Plan, especially with regard to creating a pedestrian-friendly town center area to serve as the central focus for the entire study area. The CTCAC finds that in order to uphold these objectives, it is imperative for the developer to adhere completely to the Project Plan Guidelines/Conditions and Findings.

We have determined multiple areas in which Newland has departed from the intent and vision of the Master Plan and, more seriously, violated the Project Plan Conditions and Findings. The most pressing issue is Newland's violation of the height restrictions. The approved Project Plan restricts building heights to 4 stories/45' for residential and 4 stories/50' for commercial. The Master Plan and Project Plan clearly state the necessity for ensuring compatibility of scale with the historic district. As confirmed to us by John Carter and Nellie Maskall of Community Based Planning, and Michael Ma of Development Review, this was a driver for the height limitation of 45' for residential structures.

CTC residents are gravely disturbed that buildings already constructed in Phase 1-B3 of the CTC development (Bozutto condominiums) measure 57', as recently confirmed to CTCAC by MNCPPC Development Review. Newland also confirmed a height in excess of 45', but stated that the building was 53'4". In either case, the structures are not compatible in scale with the historic district. This is a serious violation which requires immediate attention.

In addition to the buildings already constructed in Phase 1-B3, there are also buildings currently under construction within Phase 2B (Craftstar 2/2 Condominiums – Parcels B & N) which also violate the height restrictions, with planned heights of 51'7". Further, there are several other site plans previously approved for

Phase 2C which include additional Craftstar 2/2 Condominiums with planned heights exceeding the 45' maximum allowable according to the Project Plan Guidelines. Apparently, the site plans for these structures were erroneously approved, and/or the developer did not specify heights on the site plan (beyond "4 stories") and has violated the height restriction without MNCPPC's awareness. The CTC residents are seeking immediate action by MNCPPC to correct this situation before new buildings are constructed.

Ensuring compatibility with the historic nature of Clarksburg, especially in terms of scale as described with the Master and Project Plan, is essential to creating the type of community that was presented to the residents by the developer and builders when we purchased our properties in Clarksburg Town Center. We appreciate the assistance that we have received from MNCPPC to date in this regard. We have scheduled a meeting with Community Based Planning and Development Review for December 13th to discuss the specifics relative to the height violations described. However, the CTCAC respectfully requests a meeting with you to discuss our overall concerns.

We would appreciate it if a meeting could be scheduled with you prior to December 17th. We will contact Joyce Coleman to arrange the meeting at your convenience.

Sincerely,

Subj: **Follow up**
Date: 12/10/2004
To: catherine.matthews@montgomerycountymd.gov

Hello, Catherine.

Just wanted to let you know what a pleasure it was meeting you at the transportation planning meeting on Wednesday. It was wonderful to hear your views regarding Clarksburg Town Center and to know of your support of our efforts to uphold the Master Plan and Project Plan vision and intent. We have so appreciated Nancy Hislop, her views and her willingness to work with us, and it is nice to know that you are equally supportive.

As you mentioned, it will be critical for us to have significant representation at the Board hearing. We are confident that our CTCAC and residents can show up en masse! We take the building of our Town Center very seriously and are willing to do whatever necessary to ensure compliance with the Master Plan vision. As you know, it is the last chance along the 270 corridor to get this right!!

Thanks so much for your input on the retail center issues. We meet with John Carter and Rose Krasnow(sp?) on Monday to discuss that as well as the height violations. We will give you/Nancy an update after our meeting.

Again, it was a pleasure meeting you.

Sincerely,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Follow-up

12/14/2004

john.carter@mncppc-mc.org

michael.ma@mncppc-mc.org, wynn.witthans@mncppc-mc.org,
susan.edwards@mncppc-mc.org, rose.krasnow@mncppc-mc.org,
councilmember.knapp@montgomerycountymd.gov,
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nancy.hislop@montgomerycountymd.gov, derick.berlage@mncppc-mc.org,
joyce.coleman@mncppc-mc.org, nnagda@ENERGENconsulting.com,
smithcar@mail.nih.gov, Shileykim@aol.com

Hello, John, Rose, Michale, Wynn, and Susan.

First, I want to thank you for meeting with us yesterday. Kim, Carol, Niren and I greatly appreciate your time and assistance in our attempts to ensure that Clarksburg Town Center is developed according to the vision and intent of the Master Plan, and in compliance with the Project Plan guidelines. On behalf of our entire CTCAC, we thank you for your efforts to date.

As we mentioned, we have the utmost respect for the work that was done by Community Based Planning, together with the Clarksburg Civic Association, the Historical Society, and all other contributors, to develop the Master Plan vision and the subsequent Project Plan guidelines to uphold that vision throughout the development process.

With regard to the height violation evident in the existing Bozutto condominium, and height violations of additional residences planned but not yet built, we are gravely concerned. As discussed yesterday, violations must be called out by MNCPPC as violations. Otherwise, the entire validity of the Project Plan process is nullified. It is not appropriate to enable developers to arbitrarily deviate from Project Plan conditions and findings...especially in an RMX2 project under "optional method of development" where such conditions and findings are "expressly tied to" and "not automatically severable" from the Project Plan, without remanding the entire Project Plan back to the Board for consideration. There is a proper process for the Board to review and address such developer desires in a hearing *prior* to the construction of structures which clearly violate terms and conditions of the Project Plan.

We do not believe that the height violation issue(s) can be properly addressed during the January hearing for supplemental amendments desired by the developer. As stated yesterday, we would expect MNCPPC to issue a violation to the developer and establish a Board hearing specifically on this issue.

As stated by Michael Ma, and confirmed by Wynn Witthans, the site plan(s) for the Bozutto condominiums as well as the 2/2's, did not contain specific height measurements - they merely stated "four stories." Therefore, we do not believe that MNCPPC is responsible for the violations. With a designation of "four stories" it would be expected that the site plan would be approved under the current Project Plan. The oneness is upon the developer to ensure that builders of those "four stories" comply with the heights specified in the Project Plan. The developer is clearly accountable and responsible for compliance with all conditions and findings of the Project Plan. It is evident that the developer was aware of the 45' height limitation for residential structures, and, under the "Site Plan Enforcement Agreement," takes full responsibility for development in accordance with that limitation.

We cannot sit idly by while developers change Project Plans at whim, according to market drivers. We appreciate your help in ensuring the sanctity of the Master Plan/Project Plan process.

We will await your response regarding issuance of a violation notice to the developer. Again, thank you for your time and assistance.

Sincerely,
Amy Presley (on behalf of the CTCAC)

Subj: **Fwd: Follow-up**
Date: 12/21/2004
To: rose.krasnow@mncppc-mc.org
CC: john.carter@mncppc-mc.org, michael.ma@mncppc-mc.org, wynn.witthans@mncppc-mc.org,
susan.edwards@mncppc-mc.org, councilmember.knapp@montgomerycountymd.gov,
catherine.matthews@montgomerycountymd.gov, nancy.hislop@montgomerycountymd.gov,
derick.berlage@mncppc-mc.org, joyce.coleman@mncppc-mc.org, nnagda@ENERGENconsulting.com,
smithcar@mail.nih.gov, [Shileykim](#)

Hello Rose and all.

We have not yet heard back from you regarding the height violation issues and are wondering whether MNCPPC intends to issue a violation notice to Newland. The CTCAC would greatly appreciate a written response before the end of this week.

Thank you for your assistance in this matter.

Regards,
Amy Presley
on behalf of the CTCAC

Subj: **December 8th Meeting - Follow-up**
Date: 12/23/2004
To: kambrose@newlandcommunities.com
CC: smithc@efdb.nci.nih.gov, davidkitchens@coopercarry.com, trodriguez@parkerrodriguez.com,
rcroteau@newlandcommunities.com, shileyk@mail.nih.gov, nnagde@ENERGENconsulting.com,
iersub13@yahoo.com, rdefrehn@nccmp.org, timdearros@comcast.net, Lfantle, cariandieff@comcast.net,
murfs@comcast.net, JJackman@wtplaw.com, sendtriciamessages@msn.com, john.carter@mncppc-mc.org,
Nellie.Maskal@mncppc-mc.org, michael.ma@mncppc-mc.org, Wynn.Witthans@mncppc-mc.org,
sue.edwards@mncppc-mc.org, rose.krasnow@mncppc-mc.org, tbrown@linowes-law.com,
Councilmember.Knapp@MontgomeryCountyMD.gov, Councilmember.Knapp@MontgomeryCountyMD.gov,
catherine.matthews@montgomerycountymd.gov, nancy.hislop@montgomerycountymd.gov,
derick.berlage@mncppc-mc.org, joyce.coleman@mncppc-mc.org
File: **C:\Documents and Settings\Presley\My Documents\CTCAC\Newland\NewlandResponse12-21-04[1][1].doc** (65024 bytes) DL Time (TCP/IP): < 1 minute

Hello, Kim.

The CTCAC met on December 13th to review the new retail site concept as presented by Newland on December 8th. All were pleased with the direction Newland is taking relative to the overall design, yet we still have some outstanding concerns.

Understanding your desire to move quickly towards a site plan hearing, we did not want to wait until after the holidays to submit our comments to you. The attached letter outlines our comments regarding the new concept. We will await your response as to a follow-up meeting or other appropriate next steps.

In the interim, we wish you a Merry Christmas/Happy Holidays.

Sincerely,

Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE

Kim Shiley, CTCAC Co-Chair
Carol Smith, CTCAC Co-Chair
Amy Presley, CTCAC Spokesperson

December 21, 2004

Ms. Kim Ambrose
Vice President, Operations
Newland Communities
8201 Greensboro Drive
Suite 817
McLean, Virginia 22102

Dear Kim:

First, we want to thank you and your team for meeting with us on December 8th to present the revised concepts for the CTC Town Square and retail area. The design presented addressed several of our concerns relative to pedestrian-orientation, the potential grading issues with the previous plan, and the placement of the library relative to use of the Town Square green space. We found the new design to be visually attractive and we are appreciative of the beautiful work done by Trini and David. However, we feel strongly that appropriate form *and* function are critical to the success of the Town Square/Retail area and fulfillment of the Master Plan/Project Plan intent.

We presented and discussed the design with the CTCAC on December 14th and are in full agreement regarding our assessment of the new design. We find the following to be the positive aspects of the design:

- **Overall Design**
 - o The new design is visually interesting and, dependent upon proper execution of architectural detail, will create a pleasant and inviting Town Square and pedestrian-oriented Retail area
 - o The new design provides for safe pedestrian traffic and gathering areas.
- **Library**
 - o The new location establishes the library as a "significant" building, as appropriate according to the Master Plan/Project plan.
 - o The planned architecture, with two stories and open loft "reading room," will provide visual interest and increased functionality.
 - o The library will serve as a linkage to the Town Square green space and enable better usage of the Town Square area.
- **Grocery Store**
 - o The new location of the grocery store provides for decreased visibility of the truck loading area and addresses pedestrian safety relative to truck deliveries, by avoiding residential and pedestrian pathways.

Regarding functionality, specifically with respect to the Master Plan/Project Plan vision and guidelines for the Town Square retail area, there are several issues of great concern still outstanding with the new design. We find the following issues to be of most significant concern:

- **Reduction of Retail/Office Space**
 - o The reduction of retail and office space in the new design to 116,500 sq. ft. of retail and 6,000 sq. ft. of office space is unacceptable, as it will not adequately provide for the mix of uses envisioned in the Master Plan/Project Plan as necessary to "create a lively and diverse place" (p. 44) and "create a Town Center which will be a strong central focus for the entire study area" (p. 42).
 - *Note: The Master Plan/Project Plan allowed for and encouraged a total of 250,000 square feet of retail and office space (150,000 sq. ft. retail; 100,000 sq. ft. office). These guidelines were established under the special RMX2 zoning with the intent of creating a self-sustaining, pedestrian-oriented Town Center that would serve the community and study area long term.*

- The new design includes two pad sites (adjacent to the retail area and parallel with Overlook Park Drive) that neither foster pedestrian access as well as they could, nor provide for the optimum sq. ft. retail and office space allowable under the Project Plan to serve the community. While pad sites are lucrative for the retail developer (in that the retailer, vs. the developer, is responsible for construction of the building), they do not best serve the community. These pad sites and the available space would better serve the community if connected to the building on Overlook Park Drive and Clarksburg Town Square Drive and if designed as two stories to maximize square footage.
 - *Note: The pad sites could become one contiguous retail area and could have a second floor added. If the sites were joined to the other building on Overlook Park Drive, also built with two stories instead of one, it would encourage pedestrian traffic on the Overlook Park side and allow for potential back-to-back retailers to fill the space, as well as providing for supplemental office space above.*
- The new design also includes a freestanding pad site (between the bank and grocery store) that Newland presented to us as a restaurant for gathering and dining ("with great views of the park area, etc.). However, only a total of 5,000 sq. ft. is planned for this site. This footprint will not accommodate anything larger in scale than a "Panera." It does not provide for a larger restaurant that would accommodate the community with a "dining" establishment vs. an upscale fast-food establishment. We suggest increasing the size of this building to a minimum of 9,000 sq. ft.
 - *Note: The types of retail planned will have a dramatic impact on the community and the success of the pedestrian-orientated Town Center goal of the Master Plan. If there are no spaces that will accommodate the mix of retail/dining establishments to support a pedestrian and destination draw, this will impact negatively on the community long term.*

- Grocery Store

- The grocery store in the new design has a footprint of 63,000 sq. ft. This accounts for more than half of the total retail area planned, leaving a balance of only 53,500 sq. ft. for other retail establishments. We find, and are supported by county officials, that the planned grocery store is too large for the scale of the community and should be reduced to allow for other retail and/or entertainment space (as encouraged by the Master Plan to create a unique and lively focus).
 - *Notes:*
 1. *The footprint of the grocery store (Giant) at Kentlands is 60,854 sq. ft. We do not need a grocer of that size to support this area. If so, then we also need retail proportionate to that of the Kentlands.*
 2. *If the grocery store is intended as the sole anchor to achieve a destination center draw, competition with the Cabin Branch and Clarksburg Village retail areas and grocer (to be built soon after Clarksburg Town Center) should be considered. Thought and commitment must be given to creating a unique draw to the Town Square/Retail center – such as the addition of entertainment space (movie cinema cafes/theater, etc.) -- not merely a large grocery store. Again, "create a Town Center which will be a strong, central focus for the entire study area".*

- Mix of Retail/Office Space

- As noted, we find an appropriate mix of retail and office space to be critical to supporting the Master Plan/Project Plan vision for Clarksburg Town Center. Based

on the plan presented we do not see an appropriate allocation of retail/office space to accommodate the mix of uses envisioned. We would like assurance from Newland that an adequate mix of retail establishments (including dining, entertainment and other strategically selected retailers/boutiques) will be planned for and included in the Town Center retail area..

- *Notes:*

1. *We believe that the reduction of retail space, increase of grocery store space, and insistence on pad site locations/sizes is being driven by Newland's contract with the retail developer (Regency) vs. the intent to develop the type of Town Center envisioned for the community in accordance with the Master Plan/Project Plan.*
2. *We would like written assurances from Newland that the retail developer ultimately contracted will have the sensitivity necessary to develop the retail area in accordance with the Master Plan/Project Plan vision, vs. merely from a "cookie-cutter"/"strip center"/profit only motive.*

- **Planned Residential**

- o The addition of residential units within the retail area of the Town Square is not in accordance with the Master Plan/Project Plan and reduces the amount of office/retail space available.

We suggest eliminating the residential units and/or reducing the residential units to provide for office space (2nd floor) above retail (1st floor) along Clarksburg Square Drive and General Store Drive.

- **West Side/Residential Site Plan**

- o On initial review of the West Side residential site plan shown to CTCAC at the December 8th meeting, we believe that the revisions to the plan are positive. However, we are still concerned with the cohesiveness of the West Side of the Town Square area with the Retail side. Therefore, we cannot give our full support of it until we can view the site plan in conjunction with the revised Retail area site plan.

Adherence to the Master Plan and Project Plan Guidelines, especially with respect to the intended functionality of the Town Square area, is of vital importance to us as a community. We appreciate the progress Newland has made to date towards fulfilling the Master Plan/Project Plan vision. However, as a community, we cannot support the most recent design presented to us without first having our remaining concerns addressed. We believe that another meeting with you, followed by some appropriate revisions to the plan presented, would bring us nearer to that point of support of the conceptual design.

The CTCAC would be available to meet during the second week in January to review these concerns in detail and discuss appropriate revisions to the plan. Please contact us to let us know a convenient time to get together with your team.

Sincerely,

Kim Shiley, CTCAC
Carol Smith, CTCAC
Amy Presley, CTCAC
on behalf of CTCAC and Residents

Cc: Wynn Witthans, MNCPPC
Michael Ma, MNCPPC
Rose Krasnow, MNCPPC
Sue Edwards, MNCPPC
John Carter, MNCPPC
Todd Brown, Linowes & Blocher
Rick Croteau, Newland Communities

RE: Follow-up

12/23/2004 6:28:11 PM Eastern Standard Time

Rose.Krasnow@mncppc-mc.org

Synergiesinc@aol.com

Sent from the Internet (Details)

Amy,

I am well aware that you had hoped to receive a response from me by the end of this week, and I apologize that I am not meeting that deadline. I should have a response to you either Monday or Tuesday.

Let me wish you the happiest of holidays.

Rose Krasnow

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]

Sent: Tuesday, December 21, 2004 11:18 AM

To: Krasnow, Rose

Cc: Carter, John; Ma, Michael; Witthans, Wynn; susan.edwards@mncppc-mc.org;

councilmember.knapp@montgomerycountymd.gov;

catherine.matthews@montgomerycountymd.gov; nancy.hislop@montgomerycountymd.gov;

Berlage, Derick; Coleman, Joyce; nnagda@ENERGENconsulting.com; smithcar@mail.nih.gov;

Shileykim@aol.com

Subject: Fwd: Follow-up

Hello Rose and all.

We have not yet heard back from you regarding the height violation issues and are wondering whether MNCPPC intends to issue a violation notice to Newland. The CTCAC would greatly appreciate a written response before the end of this week.

Thank you for your assistance in this matter.

Regards,

Amy Presley

on behalf of the CTCAC

(Dated December 30, 2004)

Ms. Amy Presley
(On behalf of CTCAC)

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Ms. Presley,

Thank you for your continued interest in the regulatory plan approvals for the Clarksburg Town Center.

At the December 13, 2004 meeting between M-NCPPC Staff and representatives of CTCAC, you and the other CTCAC members present expressed your collective view that the developer of the Clarksburg Town Center knowingly submitted a site plan that deviated from the project plan conditions and findings, specifically with respect to the heights of certain buildings. You also stated your opinion that, pursuant to the optional method of development in the RMX-2 zone, under which Clarksburg Town Center was approved, the site plan conditions and findings are tied to and are not severable from the Project Plan. In light of this, you have requested that the Commission issue a notice of violation.

Following a review of all the pertinent documents and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 ("Site Plan") is consistent with Project Plan No. 9-94004 ("Project Plan"); (2) that finding was properly made; and (3) the buildings in question comply with all conditions and development standards attached to the Site Plan. Having so concluded, Commission Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so.

As you know, the approval of the Project Plan was subject to a number of conditions; however, the height of the buildings was not included as a condition of approval. Rather, the reference to a proposed height of forty-five feet was included parenthetically within the "Proposed" column of a table entitled "Data Summary: Clarksburg Town Center." That table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. As you know, that table listed "four stories" under the "Required" column, which limitation is drawn from the Clarksburg Master Plan ("Master Plan") Land Use Plan recommendations for the Town Center District.¹ Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment buildings, stating in relevant part only that "[a]ll apartment buildings in the future Town Center will be four stories or less" Clarksburg Master Plan p. 44 (emphasis added). Therefore, the proposed "four-story" limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation. In the Site Plan staff report, the proposed height limitation for residential buildings was similarly set at four stories, however, no specific numerical limitation was recommended. It was, and continues to be, Commission Staff's view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan; and, moreover, that a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval. On Staff's recommendation, the Board determined that the Site Plan was consistent with the Project Plan, which determination necessarily includes a finding that the proposed height limitation of four stories in the Site Plan is consistent with that proposed in the Project Plan.

The Site Plan constitutes a detailed review of the proposed project and assigns the final site plan data limits, with which limits the buildings must conform, in order to comply with conditions of the building permit. With

¹ The Zoning Ordinance permits higher density residential uses under the optional method in the RMX Zones, provided that they are in accordance with, among other things, the limitations contained in the applicable master plan.

respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards; and, therefore, in Commission Staff's view, the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations.² At the December 13 meeting, there appeared to be consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation—it only specifies that the buildings will be four stories—and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the “two-story over two-story” (2/2) buildings) are in conformance with the Planning Board's approval of the Site Plan.

We appreciate your interest in the Clarksburg Town Center community and recognize that you have a strong vision of what that community should look like. These four-story buildings are, apparently, taller than what you had anticipated and may, therefore, intrude on that vision. However, for the reasons stated above, we have concluded that there exists no basis upon which the Commission can cite the builder or developer for a violation of the regulatory approvals; and, furthermore, any question concerning a potential violation of a condition of the permit is outside of the Commission's authority.

As you know, site plan proposals for the amendment of Phase I (8-98001E) residential and Phase III (8-04034) retail are still pending. The proposals consist of an amendment for a new site plan for the commercial area; and, additionally, an amendment to both Phase I and II residential site plans, in order to modify the “Manor Homes” from 9 units to 12 units. We encourage you to make your views known to Commission Staff and the Planning Board as we proceed with the review and consideration of these amendments.

Please contact me if I can be of any further assistance. My Staff will inform you of our future Planning Board dates and will be available to meet with you on the projects currently under review.

Sincerely,

Rose G. Krasnow
Development Review Chief
Maryland National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
(p) 301 495-4591
(f) 301 325-3462
rose.krasnow@mncppc-mc.org

² It is, of course, outside of the scope of the Commission's authority to make a determination as to compliance with a building permit. Such a determination is properly made by the Montgomery County Department of Permitting Services.

Subj: **Meeting Confirmation**
Date: 1/6/2005
To: dorothy.krass@mncppc-mc.org
CC: smithcar@mail.nih.gov, Shileykim@aol.com
BCC: Councilmember.Knapp@MontgomeryCountyMD.gov

Hello, Dorothy.

Thank you for your assistance in scheduling the meeting for us with Mr. Berlage. I just wanted to confirm to you that we will arrive at his office on Monday, Jan. 10, at 4:00pm.

Regards,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

MEETING AGENDA

Date: January 10, 2005
Location: MN-CPPC – Office of the Chairman
Time: 4:00pm
Attendees: M-NCPPC Chairman of the Board – Derick Berlage
CTCAC Co-Chairs – Kim Shiley, Carol Smith, Amy Presley

Agenda:

- I. Introductions
- II. Overview
 - o Formation of the Clarksburg Town Center Advisory Committee (CTCAC)
 - o Clarksburg Town Center Development to date
 - o Interactions with M-NCPPC to date
 - o Interactions with Developer to date
- III. Height Violation Discussion
 - o Master Plan
 - o Project Plan
 - o Montgomery County Codes
 - o Preliminary Plan
 - o Site Plan
 - o Site Plan Enforcement Agreement
- IV. Supplemental Concerns
 - o Dangers of "Bait and Switch"
 - o Current Town Square / retail center development issues
 - o M-NCPPC processes, procedures and accountability
- V. CTCAC Expectations
 - o Issuance of violation notice to Developer
 - o Accountability and follow-up with M-NCPPC
 - o Guardianship of the Master Plan / Project Plan enforcement by M-NCPPC
- VI. Next Steps – Open Discussion

Clarksburg Town Center Development – Documentation Relative to Height Restrictions

| Document | Approvals | Pertinent Data | Notes |
|--------------|--|---|---|
| Master Plan | Planning Board Approval - June, 1994 | <p>Within the "Ten Key Policies Guiding the Master Plan":</p> <p>1. "Town Scale of Development"</p> <p>6. "Plan proposes a transit-oriented, multi-use <i>Town Center</i> which is compatible with the scale and character of the Clarksburg Historic District".....</p> <p><i>"Assuring compatibility of future development with the historic district has been a guiding principle of the planning process."</i> (p26)</p> | <p>The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan findings. This is apparent, as the existing RMX2 guidelines would have been sufficient, and not required explicit specification of height limitations, had Community Based Planning felt that "4 stories" was adequate language to ensure "scale and compatibility" with the historic district.</p> |
| Project Plan | Planning Board Approved – May 11, 1995 | <p>"Based on the oral testimony, written evidence submitted for the record, and the staff report, the following <i>conditions and findings</i> are hereby adopted."</p> <p>"Finding #1: The Planning Board finds that Project Plan #9-94004 as conditioned meets all of the purposes and requirements of the RMX2 zone. A summary follows that compares the development standards shown* with the development standards required in the RMX2 zone." (Page 1 of the Project Plan).</p> <p>*(i.e. those proposed for CTC)</p> <p>The findings include the data sheet outlining the standard RMX2 zone height ("4 stories") with the proposed heights for Clarksburg Town Center:</p> <p>" 4 stories/45' " for residential buildings</p> <p>" 4 stories/50' " for commercial buildings</p> | <p>The Project Plan includes a data table outlining the permitted standards under RMX2 development (as was also outlined within the Master Plan) compared to the specific limitations proposed for the Clarksburg Town Center. This data table specifically denotes a limit of 45' for residential buildings and 50' for commercial buildings.</p> <p>Compatibility with the "scale and character" of the Clarksburg Historic District was unarguably one of the "guiding principles" behind the Master Plan (and adamantly promoted by the Clarksburg Civic Association, the Historic Society and others who participated in the planning process). The specific height limitations were included within the data sheet of the Project Plan to ensure the desired compatibility with the historic district. John Carter, Nellie Maskall, and Michael Ma have all confirmed that the data sheet attached to the approved Project Plan is valid. It was included within the Project Plan to ensure compatibility with the historic district and, having been approved with the Project Plan "findings," the limitations within the data sheet become "necessary elements" of development for Clarksburg Town Center.</p> |

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| Preliminary Plan | Planning Board Approved – March 26, 1996 | <p>Background: "...the underlying development authority, Project Plan #9-94004, was approved by the planning board on May 11, 1995, after two prior planning board meetings (held on April 6 and 20, 1995). The record for the preliminary plan #1-95042 specifically includes the records from those prior hearings...</p> <p>Therefore, the planning board approves the plan. The approval is subject to the following conditions:</p> <p>...</p> <p>#14. "Preliminary plan #1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan #9-94004. <i>Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable.</i>"</p> | <p>The Planning Board itself determined all conditions, findings, or "requirements", as outlined in the Project Plan to be "essential components" of the approved plans and "NOT automatically severable." Therefore, the data sheet containing height definitions of 45' for residential and 50' for commercial can neither be ignored at Site Plan approval, nor arbitrarily over-ridden by any member of the M-NCPPC staff or by the developer. (See definition of "Minor Amendment" under Zoning Ordinance #59... Removing the height definitions would NOT be considered a Minor Amendment – i.e. not allowable without amendment hearing.)</p> |
| Montgomery County Zoning Ordinance #59 | | <p>59-C-10.2 Methods of Development 2. Optional Method of Development –</p> <p>Under this method, general commercial uses and higher density residential uses are allowed in the RMX zone provided they are in accordance with the provisions of Section 59-C-10.3 as well as the density, <i>numerical limitations</i> and other guidelines contained in the applicable Master Plan approved by the district Council. In addition, a Project Plan and Site Plan must be approved by the Planning Board.</p> <p>59-C-10.3 Optional Method of Development Regulations –</p> <p>This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County. <i>This method of development is a means to encourage development in accordance with the recommendations and guidelines of approved and adopted Master Plans.</i> Approval of this optional method of development is dependent upon the provision of certain public facilities and amenities by the developer. The requirement for public facilities and</p> | <p>The Optional Method of Development, is the option under which CTC is zoned for RMX2 development. This option explicitly requires adherence to the Master Plan/Project Plan and Site Plans in accordance with the Project Plan.</p> <p>According to 59-C-10.2, #2, under the Optional Method of Development, the commercial uses and higher density residential uses are allowed only provided that they are in accordance with "<i>numerical limitations</i>" and guidelines of the plans approved.</p> <p>59-C-10.3 states that the Optional Method of Development is a "means to encourage development in accordance with" recommended guidelines. (Clearly shows the intent to regulate development under "Optional Method" vs. leaving development open to interpretation under general RMX2 requirements.) Once again, it is apparent that this is why a data sheet denoting the guidelines for development of CTC, including specific height parameters, was included within</p> |

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| | | <p>amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone.</p> <p>59-C-10.3 Optional Method of Development Regulations – This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County...</p> <p>59-C-10.3.11 Development Procedure – A. The procedure for approval for an <i>optional method of development in these zones requires a Project Plan in accordance with division 59-D-2 and a site plan in accordance with division 59-D-3.</i></p> <p>59-D-A-2 – Optional Method requires a Project Plan and Site Plan ... precondition for the use of the optional method of development</p> <p>59-D-3-23 – Proposed Development – ... (Referencing what must be included within the site plan) ... (a) The location, height, ground coverage and use of all structures.</p> <p>59-D-3.4 – Action by Planning Board (1) ...the Site Plan is <i>consistent with an approved development plan or a Project Plan for the Optional Method of development</i>, if required... (4) ...each structure and use is <i>compatible with other uses and other site plans and with existing and proposed adjacent development.</i></p> <p>59-D-2.6 Amendment: Minor Plan Amendment A minor amendment is an amendment or revision to a plan or any findings, conclusions, or conditions associated with the plan <i>that does not entail matters that are fundamental determinations assigned to the Planning Board.</i> A minor amendment is an amendment that <i>does not alter</i> the intent, objectives, or <i>requirements expressed or imposed by the Planning Board</i> in its review of the</p> | <p>the Project Plan and subsequently adopted by the Planning Board.</p> <p>Under the Optional Method of development within RMX2 zoning, the Project Plan is an authoritative document. This is explicit under 59-C-10.3.11, as is the requirement for a site plan in accordance with 59-D-3 – requiring that “height” and use of all structures must be noted. As “4 stories” is merely a standard for RMX2 in <i>general</i>, and the approved Project Plan included a data sheet with <i>specific</i> height parameters, under the Optional Method of Development (according to 59-C-10.3.11, 59-D-A-2, and 59-D-3-23) the heights for any structures within a site plan must be in accordance with height definitions/limitations outlined and approved within the Project Plan Findings.</p> <p>(It is clear that the change in height within Wynn Witthan's documentation does not constitute a Minor Amendment, according to 59-D-2.6. Even if Wynn were to position this as a “Minor Amendment” there is no documentation – i.e. approval “in writing by the Planning Board staff” to support that as a deliberate action by the Planning Board staff.)</p> |
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| | | <p>Plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.</p> <p>59-D-3.6 Failure to Comply</p> <p>If the Planning Board finds for any plan approved under this section on its own motion or after a complaint is filed with the Planning Board or the department that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board after due notice to all parties concerned, and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan... The Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50... Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use and occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.</p> | <p>If the site plan, as confirmed by M-NCPPC staff members (Michael Ma, Wynn Witthans, Rose Krasnow), merely showed "4 stories" as the height notation for the buildings in question, even as approved by the Planning Board, it still does not authorize those "4 stories" to exceed the height limitations as defined within the Project Plan findings and approved by the Planning Board. Under the "Optional Method of Development" the Developer is still obligated to ensure that the "4 stories" comply with the conditions and findings of the Project Plan. The Planning Board is also obligated to enforce those conditions and findings.</p> |
| <p>Site Plan Review (Wynn Witthans' - Staff Report submission & Planning Board Opinion)</p> | <p>Planning Board Opinion - January 22, 1998</p> | <p>Site Plan Review: Staff Recommendation; Proposal</p> <p>*Findings for Site Plan review (Page 35):</p> <p>#1 Site Plan is consistent with the Project Plan approved for this site utilizing the RMX2 optional method of development. (See discussion above.)</p> <p>#2 The Site Plan meets all of the requirements of the zone in which it is located. (See project data table* above.)"</p> <p>Planning Board Opinion:</p> <p>"Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:</p> <p>#1. The site plan is consistent with the approved development plan or a Project Plan for the Optional</p> | <p>**From the Staff Report prepared by Wynn Witthans and presented to the Board for approval of the Phase 1 Site Plan.</p> <p>Within Wynn's Staff report, submitted as part of the site plan review documentation for the Board, is a data table that varies from the data table included in the approved Project Plan (as part of the "Findings" deemed by the Board to be "essential" components of the Project Plan). The data table that Wynn submitted with her Staff Opinion appears to have been re-written to show a generic "4 stories" denotation for building heights, omitting the specifications of "45' for residential" and "50' for commercial." The first and only appearance of this altered data</p> |

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| | | <p>Method of Development, if required. #2 The site plan meets all the requirements of the zone in which it was located."</p> | <p>table among M-NCPPC documentation is within Wynn's Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden Community Based Planning's recommendations, as well as the "Findings" approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent, at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer's desires.</p> <p>Again, as stated within our Zoning Ordinance notes, even in the presence of a generic "4 stories" denotation on the altered data table and/or the submitted Site Plan, the Developer is still accountable to ensure that the "4 stories" are in compliance with the height restrictions of the approved data table/findings as part of the approved Project Plan. Also, according to zoning ordinance for Optional Method, and the Planning Board's own Findings, M-NCPPC is still accountable to enforce the limitations/ guidelines contained within the approved Project Plan Findings. There is no language within the Site Plan Review Staff Report or the Board Opinion that negates the Data Table ("Finding") of the Project Plan -- i.e. that the "4 stories" shown on the Site Plan must be in compliance with the heights as defined -- 45' for residential buildings and 50' for commercial buildings.</p> |
| Site Plan Enforcement Agreement | <p>Montgomery County Planning Board, Linnowes & Blocher, LLP (legal counsel for the Developer) & Piedmont Land Associates (Developer) March 18, 1999</p> | <p>(Page 1) "Whereas, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as part of the site plan review process that <i>applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23</i> of the</p> | <p>The Developer and its legal counsel were aware of the conditions for development of RMX2 under the "Optional Method" of development. The Project Plan (including all conditions and findings) is the recognized and underlying authority. 59-D-3 requires height specification, as well as assurance that buildings are consistent with the approved Project Plan.</p> |

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| | | <p>Montgomery County Code...."</p> <p>"Whereas, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1994....</p> <p>Now, therefore, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1994....</p> <p>the parties hereto agree as follows:</p> <p>1. In accordance with approval by the Planning Board of Site Plan No. 8-98001, <i>Developer agrees that</i>, when it commences construction on any phase as set forth in the Development Program attached hereto as Exhibit "B", or any amendments thereto, <i>it will execute and maintain all the features of the site plan for that phase as required by Section 59-D-3.23 in fulfillment of the approval granting Site Plan No.8-98001</i>, and any subsequent amendments approved by the Planning Board....</p> | |
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Meeting Follow-up

1/11/2005

mcp-chairman@mncppc-mc.org

john.carter@mncppc-mc.org, sue.edwards@mncppc-mc.org, Shileykim@aol.com,
smithcar@mail.nih.gov

Hello, Derick.

I just wanted to take a moment to thank you, and John and Sue, for taking the time to meet with us yesterday. We appreciate your time and consideration of the issues we discussed surrounding height violations and other CTC development concerns.

Please advise us if there is anything we can do to assist in rapid resolution of the height violation issue. We would be happy to participate in any way necessary to address the concerns prior to further development of buildings based on potentially erroneous site plan approvals.

Again, thank you for your time. We look forward to hearing from you.

Sincerely,

Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Follow-up / Derick Berlage Meeting

1/19/2005

Councilmember.Knapp@MontgomeryCountyMD.gov

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Time (TCP/IP): < 1 minute

Hi, Mike.

Great catching up with you today. I will give serious thought to the Advisory Committee appointment you mentioned and will get back to you on Monday.

As promised, I have attached a copy of the document we prepared for our meeting with Derick Berlage. The document outlines pertinent details from the Master Plan, Project Plan, Zoning Ordinances, Site Plan and Site Plan enforcement pertaining to height issues for CTC. I am also attaching a copy of the meeting agenda. For your information, John Carter and Sue Edwards also attended the meeting (they were invited by Derick). We are certain that John agrees with our position and not sure why his opinion is not contained in the "Staff Opinion" submitted by Rose relative to the height issues. It seems that Rose's team (Development Review) provided the only input to the Staff Opinion on the height violations.

We believe that we must hold M-NCPPC accountable. The Master Plan/Project Plan process is invalidated if at the last stage (in Development Review), developers are enabled to breach agreements and standards previously approved by the Board. We greatly appreciate your continued assistance in upholding the Master Plan concept for CTC and in ensuring accountability/enforcement within M-NCPPC.

Thanks for your help to date.

Sincerely,
Amy

Re: Clarksburg Town Center/ Manor Home Buildings

1/20/2005

smithc@efdb.nci.nih.gov

Shileykim@aol.com

Hi, Carol.

Could you make a 6pm meeting on Monday or Tuesday? Or give me some other time suggestions.....

Kim, same goes for you. If the both of you can give me some time slots for Monday/Tuesday next week, I can respond to Bozzuto.

Thanks,
Amy

Re: Clarksburg Town Center/ Manor Home Buildings

1/20/2005

jmowrey@bozzuto.com

Hi, Jackie.

Didn't want you to think that we had forgotten about you. I am trying to confirm some times for Monday or Tuesday next week. I will get back to you by end of day if possible.

In the interim, could you let me know if you would be available to meet at 6pm in the evening? It is difficult to coordinate a meeting during the day with the other Co-Chairs of CTCAC, since they are both based in Bethesda. Your suggestions on time and location would be appreciated.

Thanks,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Re: Clarksburg Town Center/ Manor Home Buildings

1/20/2005

Shileykim, smithc@efdb.nci.nih.gov

Just got word from Jackie. She is willing to meet at 6pm, but next week is not good. She is hoping for the week after that and requested that we suggest a place in Clarksburg.

Suggestions? Times that work for you guys?

Let me know and I'll confirm with her.

Thanks!

CTC Development - Height Violations

1/26/2005

mcp-chairman@mncppc-mc.org

rose.krasnow@mncppc-mc.org, michael.ma@mncppc-mc.org, wynn.witthans@mncmc.org, john.carter@mncppc-mc.org, Councilmember.Knapp@MontgomeryCountyVA.gov, Shileykim@aol.com, smithcar@mail.nih.gov, nnagda@ENERGENconsulting.com, JJJackman@wtplaw.com, jersub13@yahoo.com, timdearros@comcast.net, rdefrehn@nccmp.org, murfs@comcast.net, lfantle@aol.com, cariandjeff1@comcast.net, sendtriciamessages@msn.com

C:\Program Files\America Online 8.0\misc\temp\CTCHeightIssueResponse-1-2 (28774 bytes) DL Time (TCP/IP): < 1 minute

Dear Mr. Berlage:

Please find attached a letter from the CTCAC to you requesting a Board hearing relative to height violations within the Clarksburg Town Center. We have also attached the letter we received from Rose Krasnow, along with our response comments embedded. Further we have attached a supporting document table and notations.

We appreciate your attention to this and will await your response.

Sincerely,
Amy Presley, on behalf of the CTCAC

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

January 25, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Mr. Berlage:

We are writing to you in response to the letter we received from Rose Krasnow relative to height violations within Clarksburg Town Center development. The Clarksburg Town Center Advisory Committee (CTCAC) has reviewed the letter and is astounded by the determination of the Staff on this issue.

The CTCAC, and the entire Clarksburg community, had placed its faith in M-NCPPC, expecting M-NCPPC to faithfully serve as guardians of the Master Plan intent and to ensure adherence to the Board-approved Project Plan. Unfortunately, we find not only that the M-NCPPC Staff has been grossly negligent in the Site Plan review process, but, based on the subsequent Staff determination regarding the height violations, has fallen abysmally short of serving the citizens of Clarksburg. Therefore, we respectfully request a full Board hearing on this issue.

For your record, we have attached a copy of Rose's letter with our specific response to each point. We have also attached our document reference table highlighting supporting detail for our case and position on the matter.

We would like the Board to consider this letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 59-D-3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse.

Please respond to us with the earliest possible date and time for scheduling of a full Board hearing on this issue. In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10th will be greatly appreciated.

Sincerely,

Amy Presley, Kim Shiley, Carol Smith, CTCAC Co-Chairs,
on behalf of the CTCAC
Ms. Amy Presley

(On behalf of CTCAC)

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Ms. Presley,

Thank you for your continued interest in the regulatory plan approvals for the Clarksburg Town Center.

At the December 13, 2004 meeting between M-NCPPC Staff and representatives of CTCAC, you and the other CTCAC members present expressed your collective view that the developer of the Clarksburg Town Center knowingly submitted a site plan that deviated from the project plan conditions and findings, specifically with respect to the heights of certain buildings (Note: CTCAC did not state that the developer knowingly submitted a Site Plan than deviated from the Project Plan. We did state that the Developer would have been well aware of the Data Table height definitions, as contained within the Project Plan Findings and that perhaps the Developer's submission of "four stories" was deliberately vague. We also pointed out that, even with a Site Plan that stated "four stories," those "four stories" would still be subject to the height limitations defined for "four stories" per the Data Table of the Findings contained within the Board-approved and adopted Project Plan.) You also stated your opinion that, pursuant to the optional method of development in the RMX-2 zone, under which Clarksburg Town Center was approved, the site plan conditions and findings are tied to and are not severable from the Project Plan. This is not merely the "opinion" of CTCAC – it is the Planning Board's determination according to the language of Condition #14 of the Board-approved Preliminary Plan. Under Condition #14, it is stated that:

".. Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable."

In light of this, you have requested that the Commission issue a notice of violation.

Following a review of all the pertinent documents (Specifically which pertinent documents did the Staff review? CTCAC has attached pertinent document information and requests that the Board review and reply specifically to the sections highlighted and also to our response to this letter relative to the height violations.) and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 ("Site Plan") is consistent with Project Plan No. 9-94004 ("Project Plan"); (2) that finding was properly made (We would like specific accountability and explanation as to why a revised Data Table was created and submitted to the Board along with Wynn Witthan's Site Plan Review submission, rather than using the Data Table contained in the Board-approved and adopted Project Plan Findings. We maintain that, based on submission of erroneous Data Table information, the finding could not possibly have been "properly made" by the Board.) ; and (3) the buildings in question comply with all conditions and development standards attached to the Site Plan. (The building in question may or may not comply with conditions and standards of the Site Plan itself, but that Site Plan is subject to the requirements of the Optional Method of Development – under which, compliance with the Project Plan is mandatory.) Having so concluded, Commission Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so. (It has been stated to CTCAC members, on more than one occasion and by more than one person within M-NCPPC – including Michael Ma, Wynn Witthans and even Derick Berlage, that the action, or lack of appropriate action surrounding initial submission and approval of the Site Plan in

question was an “oversight” on the part of M-NCPPC...and that “M-NCPPC will do all it can to avoid such oversight in the future.” Based on these admissions, it is incumbent upon M-NCPPC to call the error out as such and do all in its power to rectify the situation – including calling back into review the other Site Plans erroneously approved. Not to take such actions constitutes negligence on the part of M-NCPPC to abide by its own standards and procedural requirements.)

As you know, the approval of the Project Plan was subject to a number of conditions; however, the height of the buildings was not included as a condition of approval. (Height limitations were contained within the “Findings” of the Board-approved Project Plan. The Conditions of the Preliminary Plan serve to support – under Condition #14 – the requirement to uphold those Findings.) Rather, the reference to a proposed height of forty-five feet was included parenthetically within the “Proposed” column of a table entitled “Data Summary: Clarksburg Town Center.” That table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. As you know, that table listed “four stories” under the “Required” column, which limitation is drawn from the Clarksburg Master Plan (“Master Plan”) Land Use Plan recommendations for the Town Center District.³ (It is critical here to note that a specific definition of the “four stories” as proposed for the CTC development is shown within the “Proposed” column. This definition is stated as 45’ for residential and 50’ for commercial buildings. It is evident to the CTCAC, the CTC residents the CCA and the Clarksburg Community at large, that the “Proposed” heights were included as a means of ensuring development compatible with the scale and character of the Clarksburg Historic District. This reasoning was confirmed by John Carter, Chief of Community Based Planning. The necessity for and sensitivity to development compatible with the Historic District was clearly a driver throughout development of the Master Plan.

Within the “Ten Key Policies Guiding the Master Plan”:

1. “Town Scale of Development”

6. “Plan proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District”.....

“Assuring compatibility of future development with the historic district has been a guiding principle of the planning process.” (Master Plan p26).

Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment buildings (– which is exactly why Community Based Planning felt it necessary to include a numerical cap within the Project Plan Findings submitted to and approved by the Board. The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan Findings.) , stating in relevant part only that “[a]ll apartment buildings in the future Town Center will be four stories or less” Clarksburg Master Plan p. 44 (emphasis added). Therefore, the proposed “four-story” limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation (However, this limitation was not deemed sufficient by Community Based Planning at the time of preparing the Project Plan Findings. Had Community Based Planning felt that “four stories” as allowed within the Master Plan and RMX-2 Zone, without a specified height cap, was sufficient language to ensure “scale and compatibility” with the Historic District, they would not have specified a 45’ residential and 50’ commercial height cap within the Data Table contained within the Findings of the Project Plan.) In the Site Plan staff report, the proposed height limitation for residential buildings was similarly set at four stories, however, no specific numerical limitation was recommended (Please

³ The Zoning Ordinance permits higher density residential uses under the optional method in the RMX Zones, provided that they are in accordance with, among other things, the limitations contained in the applicable master plan

note that the Development Review staff was not at liberty to independently and arbitrarily change or omit at Site Plan review/submission any of the requirements, conditions and findings previously approved by the Board and contained within the Project Plan. If the Staff intended to do such, it would have been required to create an Amendment. Under the rules and guidelines for "Minor Amendment" a change of this nature would not have been allowed without full Board hearing. There is no existing documentation of any amendment to the Project Plan Findings. Please refer to document table and pertinent notes attached – 59-D-2.6.) It was, and continues to be, Commission Staff's view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan (It is astounding to the CTCAC that the Commission Staff would state that "no specific numerical limitation is necessary." According to M-NCPPC Board, by way of approval of the Project Plan Findings, it is necessary for development within CTC to conform to the "specific numerical limitations" contained within the Project Plan conditions and findings as approved and adopted, not just the Master Plan and Zoning Ordinances in general. It is a necessity for all development within the Clarksburg Town Center, under the Optional Method of Development, to comply with *all* requirements, conditions and findings of the Project Plan.); and, moreover, that a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval (The Project Plan was approved with Findings containing a specific delineation of the height for those "proposed" four stories. Therefore, with a generic delineation of "four stories" on the Site Plan, it must be expected – and if not, then confirmed by Development Review – that those "four stories" would be in compliance with the specific definition of "four stories" as proposed within the Board-approved and adopted Project Plan Findings. Please refer to the Project Plan Findings – Data Table – and our document table and pertinent notes attached.). On Staff's recommendation ("Staff" submitted to the Board a revised Data Table along with its recommendation. This Data Table was inconsistent with the Data Table contained in the Project Plan Findings previously approved by the Board. It removed from the "Proposed" standards for the CTC Development the actual height caps of 45' for residential and 50' for commercial. Submission to the Board of this revised Data Table represents, at best, gross negligence on the part of the Development Review Staff preparing the report. At worst, it represents action which could appear as being unduly influenced by the Developer. In either case, it was clearly a submission of erroneous information to the Board, resulting in an erroneous approval of the Site Plans submitted. This action alone is cause for re-examination of the Site Plans and previous approval process, and grounds, in the opinion of CTCAC, for action under Zoning Ordinance 59-D-3.6.), the Board determined that the Site Plan was consistent with the Project Plan (based on erroneous information presented by the Staff), which determination necessarily includes a finding that the proposed height limitation of four stories in the Site Plan is consistent with that proposed in the Project Plan (only because Staff conveniently removed the height caps that were present in the Data Table contained in the Project Plan previously approved by the Board. The CTCAC requests a full investigation of this action and accountability from M-NCPPC regarding the matter.).

The Site Plan constitutes a detailed review of the proposed project and assigns the final site plan data limits, with which limits the buildings must conform, in order to comply with conditions of the building permit (According to M-NCPPC Staff's own statements to the CTCAC, it is customary and expected that documents from the Master Plan through to the Site Plan follow in increasing level of detail – i.e. that the Site Plan should show a level of detail even greater than that of the Project Plan. The Project Plan, according to the Board's ruling and statements within the Preliminary Plan, serves as the "development authority" for the CTC development – Please refer to our document table and notations attached. Without a specific definition of the "four stories" shown on the Site Plan in question, the Staff would either have had to assume that those "four stories" would comply with the previously defined and approved height caps as contained within the Project Plan, or would have had to seek definition from the Developer. It is the

responsibility of the Development Review Staff to ensure that Site Plans submitted comply with Project Plan conditions and findings. It is the duty of the Staff to report responsibly to the Board, as the Board relies on the Staff's review and opinions. As we have stated, we believe Staff actions relative to the submission represent a gross negligence at best.) With respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards (but they DO NOT COMPLY with the Project Plan Findings... which are the "underlying development authority" for CTC development according to the Board); and, therefore, in Commission Staff's view (The Commission Staff's view was based on erroneous information), the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations.⁴ At the December 13 meeting, there appeared to be consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation (There was no such "consensus"...there was merely a reporting to the CTCAC by Wynn Withans, and a confirmation by Michael Ma, that the Site Plans in question did not specify height detail, that they merely noted "four stories." CTCAC can only presume that the information shared was accurate.) —it only specifies that the buildings will be four stories—and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the "two-story over two-story" (2/2) buildings) are in conformance (A mere confirmation that the Site Plans state "four stories" and that the buildings built and to be built are "four stories" does not constitute conformance with the Project Plan Findings...to which all development within CTC must conform.)with the Planning Board's approval of the Site Plan.

We appreciate your interest in the Clarksburg Town Center community and recognize that you have a strong vision of what that community should look like. (Our "vision" is merely that as defined by the Master and Project Plans. It also the community's vision, as incorporated into those plans by Community Based Planning. It is also the Board-approved vision that Development Review has a duty to uphold in the Site Plan review process.) These four-story buildings are, apparently, taller than what you had anticipated (They are taller than what Community Based Planning had specified, based on the Historic District and need for sensitivity to the scale and character of that district, and what the Board had previously approved based on the Project Plan Findings.) and may, therefore, intrude on that vision (LITERALLY. The building towers above everything within the development – totally out of character with the Historic District and also incompatible with adjacent residences. The Board must not allow further development of this scale. We implore the Board to stop work on other buildings not yet built, but also erroneously approved in previously submitted Site Plans.) However, for the reasons stated above, we have concluded that there exists no basis upon which the Commission can cite the builder or developer for a violation of the regulatory approvals; and, furthermore, any question concerning a potential violation of a condition of the permit is outside of the Commission's authority. (We remain in disagreement as to the existence of a violation. The CTCAC requests a full Board hearing on this issue, as there were clearly several internal violations relative to M-NCPPC's standard procedures and specifically relative to the Data Table alteration in the Site Plan review submission by Development Review Staff to the Board for approval.)

As you know, site plan proposals for the amendment of Phase I (8-98001E) residential and Phase III (8-04034) retail are still pending. The proposals consist of an amendment for a new site plan for the commercial area; and, additionally, an amendment to both Phase I and II residential site

⁴ It is, of course, outside of the scope of the Commission's authority to make a determination as to compliance with a building permit. Such a determination is properly made by the Montgomery County Department of Permitting Services

plans, in order to modify the "Manor Homes" from 9 units to 12 units. We encourage you to make your views known to Commission Staff and the Planning Board as we proceed with the review and consideration of these amendments.

Please contact me if I can be of any further assistance. My Staff will inform you of our future Planning Board dates and will be available to meet with you on the projects currently under review.

Sincerely,

Rose G. Krasnow
Development Review Chief
Maryland National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
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Clarksburg Town Center Development – Documentation Relative to Height Restrictions

| Document | Approvals | Pertinent Data | Notes |
|--------------|--|--|---|
| Master Plan | Planning Board Approval - June, 1994 | <p>Within the "Ten Key Policies Guiding the Master Plan":</p> <p>1. "Town Scale of Development"</p> <p>6. "Plan proposes a transit-oriented, multi-use <i>Town Center</i> which is compatible with the scale and character of the Clarksburg Historic District".....</p> <p><i>"Assuring compatibility of future development with the historic district has been a guiding principle of the planning process."</i> (p26)</p> | <p>The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan findings. This is apparent, as the existing RMX2 guidelines would have been sufficient, and not required explicit specification of height limitations, had Community Based Planning felt that "4 stories" was adequate language to ensure "scale and compatibility" with the historic district.</p> |
| Project Plan | Planning Board Approved ~ May 11, 1995 | <p>"Based on the oral testimony, written evidence submitted for the record, and the staff report, the following <i>conditions and findings</i> are hereby adopted."</p> <p>"Finding #1: The Planning Board finds that Project Plan #9-94004 as conditioned meets all of the purposes and requirements of the RMX2 zone. A summary follows that compares the development standards shown* with the development standards required in the RMX2 zone." (Page 1 of the Project Plan).</p> <p><i>*(i.e. those proposed for CTC)</i></p> <p>The findings include the data sheet outlining the standard RMX2 zone height ("4 stories") with the proposed heights for Clarksburg Town Center:</p> <p>" 4 stories/45' " for residential buildings</p> <p>" 4 stories/50' " for commercial buildings</p> | <p>The Project Plan includes a data table outlining the permitted standards under RMX2 development (as was also outlined within the Master Plan) compared to the specific limitations proposed for the Clarksburg Town Center. This data table specifically denotes a limit of 45' for residential buildings and 50' for commercial buildings.</p> <p>Compatibility with the "scale and character" of the Clarksburg Historic District was unarguably one of the "guiding principles" behind the Master Plan (and adamantly promoted by the Clarksburg Civic Association, the Historic Society and others who participated in the planning process). The specific height limitations were included within the data sheet of the Project Plan to ensure the desired compatibility with the historic district. John Carter, Nellie Maskall, and Michael Ma have all confirmed that the data sheet attached to the approved Project Plan is valid. It was included within the Project Plan to ensure compatibility with the historic district and, having been approved with the Project Plan "findings," the limitations within the data sheet become</p> |

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| | | | "necessary elements" of development for Clarksburg Town Center. |
| Preliminary Plan | Planning Board Approved – March 26, 1996 | <p>Background: "...the underlying development authority, Project Plan #9-94004, was approved by the planning board on May 11, 1995, after two prior planning board meetings (held on April 6 and 20, 1995). The record for the preliminary plan #1-95042 specifically includes the records from those prior hearings...</p> <p>Therefore, the planning board approves the plan. The approval is subject to the following conditions:</p> <p>...</p> <p>#14. "Preliminary plan #1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan #9-94004. Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable."</p> | <p>The Planning Board itself determined all conditions, findings, or "requirements", as outlined in the Project Plan to be "essential components" of the approved plans and "NOT automatically severable." Therefore, the data sheet containing height definitions of 45' for residential and 50' for commercial can neither be ignored at Site Plan approval, nor arbitrarily over-ridden by any member of the M-NCPPC staff or by the developer. (See definition of "Minor Amendment" under Zoning Ordinance #59... Removing the height definitions would NOT be considered a Minor Amendment – i.e. not allowable without amendment hearing.)</p> |
| Montgomery County Zoning Ordinance #59 | | <p>59-C-10.2 Methods of Development 2. Optional Method of Development –</p> <p>Under this method, general commercial uses and higher density residential uses are allowed in the RMX zone provided they are in accordance with the provisions of Section 59-C-10.3 as well as the density, <i>numerical limitations</i> and other guidelines contained in the applicable Master Plan approved by the district Council. In addition, a Project Plan and Site Plan must be approved by the Planning Board.</p> <p>59-C-10.3 Optional Method of Development Regulations –</p> <p>This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County. <i>This method of development is a means to encourage development in accordance with the recommendations and guidelines of approved and adopted Master</i></p> | <p>The Optional Method of Development, is the option under which CTC is zoned for RMX2 development. This option explicitly requires adherence to the Master Plan/Project Plan and Site Plans in accordance with the Project Plan.</p> <p>According to 59-C-10.2, #2, under the Optional Method of Development, the commercial uses and higher density residential uses are allowed only provided that they are in accordance with "<i>numerical limitations</i>" and guidelines of the plans approved.</p> <p>59-C-10.3 states that the Optional Method of Development is a "means to encourage development in accordance with" recommended guidelines. (Clearly shows the intent to regulate development under "Optional Method" vs. leaving development open to interpretation under general</p> |

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| | | <p><i>Plans.</i> Approval of this optional method of development is dependent upon the provision of certain public facilities and amenities by the developer. The requirement for public facilities and amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone.</p> <p>59-C-10.3 Optional Method of Development Regulations – This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County...</p> <p>59-C-10.3.11 Development Procedure – A. The procedure for approval for an <i>optional method of development in these zones requires a Project Plan in accordance with division 59-D-2 and a site plan in accordance with division 59-D-3.</i></p> <p>59-D-A-2 – Optional Method requires a Project Plan and Site Plan ... precondition for the use of the optional method of development</p> <p>59-D-3-23 – Proposed Development – ... (Referencing what must be included within the site plan) ... (a) The location, height, ground coverage and use of all structures</p> <p>59-D-3.4 – Action by Planning Board (1) ...the Site Plan is <i>consistent with an approved development plan or a Project Plan for the Optional Method of development</i>, if required... (4) ...each structure and use is <i>compatible with other uses and other site plans and with existing and proposed adjacent development.</i></p> <p>59-D-2.6 Amendment: Minor Plan Amendment A minor amendment is an amendment or revision to a plan or any findings, conclusions, or</p> | <p>RMX2 requirements.) Once again, it is apparent that this is why a data sheet denoting the guidelines for development of CTC, including specific height parameters, was included within the Project Plan and subsequently adopted by the Planning Board.</p> <p>Under the Optional Method of development within RMX2 zoning, the Project Plan is an authoritative document. This is explicit under 59-C-10.3.11, as is the requirement for a site plan in accordance with 59-D-3 – requiring that "height" and use of all structures must be noted. As "4 stories" is merely a standard for RMX2 in <i>general</i>, and the approved Project Plan included a data sheet with <i>specific</i> height parameters, under the Optional Method of Development (according to 59-C-10.3.11, 59-D-A-2, and 59-D-3-23) the heights for any structures within a site plan must be in accordance with height definitions/limitations outlined and approved within the Project Plan Findings.</p> <p>(It is clear that the change in height within Wynn Witthan's documentation does not constitute a Minor Amendment, according to 59-D-2.6. Even if</p> |
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| | | <p>conditions associated with the plan <i>that does not entail matters that are fundamental determinations assigned to the Planning Board.</i> A minor amendment is an amendment that <i>does not alter</i> the intent, objectives, or <i>requirements expressed or imposed by the Planning Board</i> in its review of the Plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.</p> <p>59-D-3.6 Failure to Comply</p> <p>If the Planning Board finds for any plan approved under this section on its own motion or after a complaint is filed with the Planning Board or the department that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board after due notice to all parties concerned, and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan... The Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50... Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use and occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.</p> | <p>Wynn were to position this as a "Minor Amendment" there is no documentation – i.e. approval "in writing by the Planning Board staff" to support that as a deliberate action by the Planning Board staff.)</p> <p>If the site plan, as confirmed by M-NCPPC staff members (Michael Ma, Wynn Withthans, Rose Krasnow), merely showed "4 stories" as the height notation for the buildings in question, even as approved by the Planning Board, it still does not authorize those "4 stories" to exceed the height limitations as defined within the Project Plan findings and approved by the Planning Board. Under the "Optional Method of Development" the Developer is still obligated to ensure that the "4 stories" comply with the conditions and findings of the Project Plan. The Planning Board is also obligated to enforce those conditions and findings.</p> |
| <p>Site Plan Review (Wynn Withthans' - Staff Report submission & Planning Board Opinion)</p> | <p>Planning Board Opinion - January 22, 1998</p> | <p>Site Plan Review: Staff Recommendation; Proposal</p> <p>**Findings for Site Plan review (Page 35):</p> <p>"#1 Site Plan is consistent with the Project Plan approved for this site utilizing the RMX2 optional method of development. (See discussion above.)</p> <p>#2 The Site Plan meets all of the</p> | <p>**From the Staff Report prepared by Wynn Withthans and presented to the Board for approval of the Phase 1 Site Plan.</p> <p>Within Wynn's Staff report, submitted as part of the site plan review documentation for the Board, is a data table that varies from the data table included in the approved Project Plan (as</p> |

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| | | <p>requirements of the zone in which it is located. (See project data table* above.)"</p> <p>Planning Board Opinion:</p> <p>"Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:</p> <p>#1. The site plan is consistent with the approved development plan or a Project Plan for the Optional Method of Development, if required.</p> <p>#2 The site plan meets all the requirements of the zone in which it was located."</p> | <p>part of the "Findings" deemed by the Board to be "essential" components of the Project Plan). The data table that Wynn submitted with her Staff Opinion appears to have been re-written to show a generic "4 stories" denotation for building heights, omitting the specifications of "45' for residential" and "50' for commercial." The first and only appearance of this altered data table among M-NCPPC documentation is within Wynn's Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden Community Based Planning's recommendations, as well as the "Findings" approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent, at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer's desires.</p> <p>Again, as stated within our Zoning Ordinance notes, even in the presence of a generic "4 stories" denotation on the altered data table and/or the submitted Site Plan, the Developer is still accountable to ensure that the "4 stories" are in compliance with the height restrictions of the approved data table/findings as part of the approved Project Plan. Also, according to zoning ordinance for Optional Method, and the Planning Board's own Findings, M-NCPPC is still accountable to enforce the limitations/ guidelines contained within the approved Project Plan Findings. There is no language within the Site Plan Review Staff Report or the Board Opinion that negates the Data Table ("Finding") of the Project Plan -- i.e. that the "4 stories" shown on the Site Plan must be in compliance with the heights as defined -- 45' for residential buildings and 50' for commercial buildings.</p> |
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| <p>Site Plan Enforcement Agreement</p> | <p>Montgomery County Planning Board, Linnowes & Blocher, LLP (legal counsel for the Developer) & Piedmont Land Associates (Developer) March 18, 1999</p> | <p>(Page 1) "Whereas, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as part of the site plan review process that <i>applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23</i> of the Montgomery County Code...." "Whereas, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1994... Now, therefore, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1994.... the parties hereto agree as follows: 1. In accordance with approval by the Planning Board of Site Plan No. 8-98001, <i>Developer agrees that, when it commences construction on any phase as set forth in the Development Program attached hereto as Exhibit "B", or any amendments thereto, it will execute and maintain all the features of the site plan for that phase as required by Section 59-D-3.23 in fulfillment of the approval granting Site Plan No. 8-98001, and any subsequent amendments approved by the Planning Board....</i></p> | <p>The Developer and its legal counsel were aware of the conditions for development of RMX2 under the "Optional Method" of development. The Project Plan (including all conditions and findings) is the recognized and underlying authority. 59-D-3 requires height specification, as well as assurance that buildings are consistent with the approved Project Plan.</p> |
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Su **Re: CTC Development - Height Violations**
Da 2/1/2005
To wynn.witthans@mncppc-mc.org
CC mcp-chairman@mncppc-mc.org, rose.krasnow@mncppc-mc.org, michael.ma@mncppc-mc.org,
john.carter@mncppc-mc.org, sue.edwards@mncppc-mc.org, nellie.maskal@mncppc-mc.org,
Councilmember.Knapp@MontgomeryCountyMD.gov, Shileykim@aol.com, smithcar@mail.nih.gov

Hello, Wynn.

The email to which you responded was sent to Derick Berlage at his request. As noted in the email and letter to Derick, however, we are asking for a Board hearing on the height issue, not information relative to the Amendment hearing. We have requested a specific hearing on the height violation issues and would not expect that the matter could be covered appropriately during the Manor Home/Amendment hearing. Derick was aware of our desire for a hearing and advised us to send the response to Rose's letter, along with our request for the hearing, directly to him.

I have made no other inquiries as to the Manor Home/Amendment hearing, as you had already informed us of that meeting date. We would likely not schedule time for ourselves to speak at that hearing if we are going to have a separate, specific hearing with the Board relative to height violations. If your email implies that time for a hearing on that matter could be made available on Friday, Feb. 11th, that would be more appropriate and would work for our group. Please confirm the date, and a time that can be made available for the hearing.

Thank you for your assistance.

Amy Presley
on behalf of the CTCAC

In a message dated 2/1/2005 12:40:55 PM Eastern Standard Time, Wynn.Witthans@mncppc-mc.org writes:

Subj: **RE: CTC Development - Height Violations**
Date: 2/1/2005 12:40:55 PM Eastern Standard Time
From: Wynn.Witthans@mncppc-mc.org
To: Synergiesinc@aol.com
Sent from the Internet

The Planning Board will be scheduled for the Manor Homes on February 10th. Phases One and Two will be heard as one item. A tentative time will be available on Friday early afternoon.

I am aware that you already know this as you, and your group have been in contact with others in our agency with various questions. If you would prefer to receive answers to your questions more directly, I invite you to contact me directly. Then my colleagues won't have to ask me and then get back to you!

Wynn Witthans
Development Review

-----Original Message-----

From: Synergiesinc@aol.com [mailto:Synergiesinc@aol.com]

Sent: Wednesday, January 26, 2005 1:54 PM

To: MCP-Chairman

Cc: Krasnow, Rose; Ma, Michael; Witthans, Wynn; Carter, John;

Councilmember.Knapp@MontgomeryCountyMD.gov; Shileykim@aol.com; smithcar@mail.nih.gov;

nnagda@ENERGENconsulting.com; JJackman@wtplaw.com; jersub13@yahoo.com; timdearros@comcast.net;

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE

February 10, 2005

Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Subject: Site Plan Review No.8-98001G Phase I and 8-02014B, Clarksburg Town Center

Good morning, and thank you for the opportunity to address the Board. My name is Kim Shiley, and with me are Carol Smith and Amy Presley. We are Co-Chairs of the Clarksburg Town Center Advisory Committee, known as the CTCAC. We represent the residents of Clarksburg Town Center. The residents elected the CTCAC to represent them in interacting with MNCPPC and the developer in order to ensure adherence to the vision and intent of the Master Plan.

It is important for the Board to know that the CTCAC and residents are in full agreement with the Land Use Objectives of the Plan, especially with regard to creating a pedestrian-friendly town center area to serve as the central focus for the entire study area. We support the development of Clarksburg Town Center; However, we believe that awarding a developer a project of this magnitude also conveys a serious responsibility to develop in accordance with the vision of the Master Plan, and with a sensitivity to the community at large.

The developer must not only develop in accordance with the Master and Project Plans, but also in a way that will result in a functional Town Center – one that will adequately serve the residents and community well into the future.

All of the residents bought in to Clarksburg based on the vision presented to them by the developer and the builders – that of a True Town center. Therefore, the CTCAC's focus is in reviewing all aspects of development from that perspective.

Although we have encountered several areas to date in which there has been a departure from the intent and vision of the Master Plan, with respect to today's hearing on the Manor Homes, we are in support of the developer's intent. We do have certain points for consideration, which Amy will share on behalf of the CTCAC and CTC residents.

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE

Again, thank you to the Board for the opportunity to present our views. As Kim mentioned, the CTCAC supports the developer's intent relative to the Manor Homes. We believe that the development of the Manor Homes, specifically the addition of supplemental units, is in compliance with the Master Plan objective to "encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations." (p9) We welcome the development of the Manor Homes, with the stipulation that they be built in accordance with the scale and character of the surrounding community. In this regard, we have a few points for consideration:

- First, we would like assurance that the building heights will not exceed 45' (in accordance with the Project Plan #9-94004 and Preliminary Plan #1-95042 specifications). We have not seen on the Site Plan a specific denotation of height in feet and inches. We have only seen a denotation of "Four Stories"... which is not adequate.
- Second, we feel strongly that sufficient parking spaces must be defined surrounding Building 9. If the Board approves the proposed addition of 6 spaces within the "private alley," we believe that the building residents will be sufficiently served.
- And, finally, we are concerned as to the building materials that will be used in the construction of the Manor Homes. Since the Manor Homes are significant buildings, some of which actually serve as "entry way" focal points, it is imperative that the buildings be constructed using the finest quality of materials for the façade. We suggest incorporating brick, stone and/or other elements in proportions that are visually pleasing and compatible with the character of the other buildings in the community. Bozzuto representatives presented to the CTCAC initial architectural renderings which portrayed facades less "stately" than what would be expected of "Manor" Homes. The ratio of brick to siding was not acceptable in our opinion. We were assured by the Bozzuto representatives that care would be given to proposing appropriate alternatives. The CTCAC and CTC residents hope that the Board would encourage such action on the part of Bozzuto.

(Carol)

We want to wrap up our comments by re-stating our support of the vision for Clarksburg Town Center. Clarksburg Town Center is the heart and soul of the town. We appreciate the Board's ongoing support to ensure that all development serves to fulfill the Master Plan vision and results in a Town Center which will truly serve the community now and into the future.

Thank you for your time.

Su **Re: Clarksburg Town Center**
Da 2/24/2005
To TChess@RegencyCenters.com, KShiley@psc.gov, Shileykim@aol.com, smithcar@mail.nih.gov
CC kambrose@newlandcommunities.com, Kris@warnermarcom.com,
 MChandler@RegencyCenters.com, TChess@RegencyCenters.com,
 RSutphin@RegencyCenters.com

Hello, Taylor.

It was a pleasure meeting with you, Mac and Kristine as well. We too appreciated your time and the opportunity to express the concerns and expectations of the community based on the master plan vision. We thank Kim and Rick for arranging the meeting.

We were pleased to hear of Regency's intent to create a "restaurants as entertainment" focus along the lines of the Bethesda row approach. We were equally pleased to have you confirm an intent to attract and secure tenants that would be considered "upscale" versus typical strip-mall tenants like "Jerrys Subs and Pizza." Of course, to this end we would be delighted to provide to you the list of suggestions already generated based on resident input, as well as specifics on any retailers we have actually approached regarding interest in tenancy in Clarksburg Town Center. We will do our best to consolidate this information and submit it to you before the end of next week.

We would also appreciate the opportunity to maintain ongoing communication with you and to participate in any way appropriate in the review and selection of particular tenants. Again, thank you for your time and consideration in meeting with us.

Sincerely,
Amy Presley, on behalf of CTCAC

Condominium Architectural Elevations

2/19/2005 1:37:07 AM Eastern Standard Time

KShiley@psc.gov

wynn.witthans@mncppc-mc.org, rose.krasnow@mncppc-mc.org,

michael.ma@mncppc-mc.org, Synergiesinc@aol.com, smithcar@mail.nih.gov

chairman@mncppc-mc.org

lpowell@cpia.com, cwagner@bozzuto.com

Sent from the Internet (Details)

Hi Wynn,

Thank you for your phone call yesterday regarding my email inquiry (attached). After speaking with you, I immediately called you again, leaving a message on your phone, and stated that I felt it is necessary for me (on behalf of the CTCAC) to obtain the requested elevations from within the departments of M-NCPPC. To re-cap the conversation we did have, you stated that:

- architectural elevations are not required to be submitted by the builders to you for site plan approval.

- that you may have the Bozzuto building elevations, but would have to check on them and their whereabouts, and

- that you definitely did not have the Craftstar 2 over 2 architectural elevations.

Your suggestion to me was to obtain the elevations from the builder, Bozzuto myself. This leaves me confused and frustrated, as M-NCPPC is a tax-payer funded governmental entity that is supposed to serve the County's residents and communities. It does not seem appropriate for me to be directed to contact the individual private entities, the builders, for such information.

Can you suggest a more appropriate way for me to receive the information we need relative to the elevation drawings? If you do have these on file, requesting them from the builders as part of the site plan review process or on our behalf, I would be appreciative of your assistance in making such copies available to the CTCAC.

Kim Shiley
on behalf of CTCAC

-----Original Message-----

From: Shiley, Kimberly A

Sent: Tuesday, February 15, 2005 8:56 AM

To: 'wynn.witthans@mncppc-mc.org'

Cc: 'michael.ma@mncppc-mc.org'; 'rose.krasnow@mncppc-mc.org'; 'Synergiesinc@aol.com'; 'smithcar@mail.nih.gov'

Subject: Elevations

Hi Wynn

Les Powell tells us that all elevations are submitted to Park and Planning during Site Plan submission.

The CTCAC is requesting copies of all elevations relative to the Bozzuto Condominiums (Buildings 1, 2, 3, 4 (all Phase 1B-3), 5, and 6 (both Phase 2A)) and the Craftstar 2 over 2 Condominiums (Parcels B and N in Phase 2B and Parcels B, Blk M and Blk L, both Phase 2C). If we need to contact another party, please advise. We are requesting to receive these elevations prior to the 24th of February.

Thank you for your assistance.

Kim Shiley
for CTCAC

p.s. also, if you are aware of the date for the threshold hearing, please advise. thank you again.

RE: Condominium Architectural Elevations

2/23/2005 2:47:12 PM Eastern Standard Time

Wynn.Witthans@mncppc-mc.org

KShiley@psc.gov, Rose.Krasnow@mncppc-mc.org, Michael.Ma@mncp

Synergiesinc@aol.com, smithcar@mail.nih.gov, mcp-chairman@mmcp.org

lpowell@cpja.com, cwagner@bozzuto.com

Sent from the Internet ([Details](#))

Kim - we do have architecture for 2/2, condos and manor homes. You can make copies of the sheets you would like to here at our info desk. I only referred you to get arch. from other sources because of your original email where you stated: "If we need to contact another party, please advise." Our front desk is open from 8:30am -4:30pm Monday -Friday. The drawings are in my cubicle and marked with yellow post-it notes (for the front desk staff to identify).

Threshold Hearing/CTC

2/22/2005 12:21:44 PM Eastern Standard Time

KShiley@psc.gov

rose.krasnow@mncppc-mc.org, john.carter@mncppc-mc.org,

susan.edwards@mncppc-mc.org, mcp-chairman@mncppc-mc.org,

councilmember.Knapp@MontgomeryCountyMD.gov

Synergiesinc@aol.com, smithcar@mail.nih.gov, Shileykim@aol.com

Sent from the Internet ([Details](#))

Hello Rose,

When we last spoke, you advised me that there would definitely be a hearing regarding the height issues most probably on March 3, with a slight possibility for February 24. I understand that the March agenda has been determined, yet our Threshold Hearing has still not been scheduled.

I am writing you today because it is imperative that we receive a response from M-NCPPC regarding the proposed hearing date. While we wait, foundations are being laid for more of the buildings in question. This is very disturbing and leads us to question whether we must escalate this through other channels in order to receive a board hearing in a timely manner, or potentially have stop work orders issued.

I am respectfully asking that a date be determined this week; in fact, prior to Thursday afternoon (in time for our CTC residents' update meeting). Your immediate response is appreciated.

Kim Shiley,
for CTCAC

RE: Threshold Hearing/CTC

2/24/2005 9:08:23 AM Eastern Standard Time

Rose.Krasnow@mncppc-mc.org

susan.edwards@mncppc-mc.org, MCChairman@mncppc-mc.org,
councilmember.Knapp@MontgomeryCountyMD.gov
Synergiesinc@aol.com, smithcar@mail.nih.gov, Shileykim@aol.com

Sent from the Internet ([Details](#))

Kim,

I appreciate your interest in setting a date for the Threshold Hearing regarding height issues in Clarksburg Town Center. The date has now been officially set for Thursday, March 17, 2005. Official notices will be sent out on Friday, March 4th. Please let me know if you have any other questions regarding this matter.

Rose G. Krasnow
Development Review Chief
Maryland National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
(p) 301 495-4591
(f) 301 325-3462
rose.krasnow@mncppc-mc.org
www.mc-mncppc.org

Su **Re: Last Nights CTCAC Meeting**
Da 3/15/2005
To nnagde@ENERGENconsulting.com, smithc@efdb.nci.nih.gov, timdearros@comcast.net,
 KShiley@PSC.GOV, Lfantle@aol.com

Hello, Niren and all.

Status on the hearing has changed since our meeting yesterday and it is no longer necessary to send the letter. We heard from Michael Ma and he has done two things:

- 1) He has removed the Newland Retail Center hearing from the April 7th hearing docket (relative to that, he has also assured that NO date will be set until after they have received comment from CTCAC on the site plans, etc.)
- 2) He has offered us dates of April 7th, 14th or any date beyond

In conversation with Michael, new information was also given to us. He has advised that Newland also has other violations which were discovered last week. These violations pertain to "setbacks" and have apparently occurred frequently throughout the development. In particular, the 2/2's that exceed the 45' height (those already constructed but not yet occupied) have been cited. This means that no occupancy permit was issued or will be issued until after Board hearings on the matter. The Board would like to have a hearing on this issue (preferably on the same day that we discuss height violation). We will need to have another CTCAC meeting to discuss the relevance of these violations and how, collectively, the potential fees assessed to the developer might be used. The Board is open to hearing from us in this regard.

Based on schedules (sorry to say I can't make the 7th of April) we are advising Michael to reschedule the height violation hearing, along with the new setback violation hearing, for April 14th. I hope you all can make the 14th? Kim may be calling you, or may have already called you on this issue, so I apologize if I am duplicating the information.

Thanks all,
Amy

Su **Re: proof read please**
Da 3/15/2005
To KShiley@psc.gov

In a message dated 3/15/2005 4:47:26 PM Eastern Standard Time, KShiley@psc.gov writes:

Greetings Rose,

We have confirmed with Michael Ma that the rescheduled Threshold Hearing will be placed on the long range agenda for April 14, 2005. We appreciate that the pending site plan submissions for CTC Retail area and adjacent have been removed from the April 7, 2005 docket.

Regarding the Threshold Hearing format, we understand the uniqueness of this type of hearing and need to be advised as to the specific process. Based on the subject matter of this hearing, and the fact that the CTCAC is the requesting body, we have discussed with Michael Ma our desire to be considered as the primary and initial presenters (as a developer or builder would in a typical Site Plan Review hearing).

We do have a formal power point presentation and would like to be scheduled as the initial presenters, with the opportunity for rebuttal comments (again, in the format of a Site Plan Review hearing, only with CTCAC serving as the main presenting body).

Michael suggested that we submit this request to you and also that we ask you regarding the process and format for this meeting. We are interested to know how much time will we be given to present, how much time other residents will be given to speak, etc.

Could you please let us know (by email or by phone) the answers to these questions, and also confirm with us our position as presenters? We greatly appreciate your assistance with our requests.

Sincerely,
Kim Shiley, on behalf of CTCAC

Su **Re: Last Nights CTCAC Meeting**
Da 3/15/2005
To smithc@efdb.nci.nih.gov, nnagde@ENERGENconsulting.com, timdearros@comcast.net,
KShiley@PSC.GOV, Lfantle@aol.com

According to Michael, the fines and/or penalties are assessed after the violation is confirmed and then weighed from a "proportional" viewpoint -- i.e. how great a violation? how many properties involved? etc. In some case, buildings DO have to be moved, but Michael did not elaborate as to what the determining factors are in those cases. We have already suggested to him that the fines assessed to Newland, if any, be directed back into the community (perhaps specifically for Library construction and/or other amenities). He/MNCPPC is willing to hear from us on this, but won't be determining fines until after the hearing.

We can discuss more at our next CTCAC meeting, as I believe our input to the Board, prior to those decisions being made, will be beneficial to the community.

Sorry for the longwinded reply!
Amy

Su **Re: Last Nights CTCAC Meeting**
Da 3/15/2005
To nnagde@ENERGENconsulting.com, nnagde@ENERGENconsulting.com, smithc@efdb.nci.nih.gov,
timdearros@comcast.net, KShiley@PSC.GOV, Lfantle@aol.com

Perhaps Niren is right? Maybe we do need to file a letter regarding the "oversight" by MNCPPC on an issue so important as this? However, after Michael's personal apologies and his removal of other items from the docket...we might not want to rock our boat?? Michael stated that he is on our side, that he "is impressed with our group and believes 100% that our motives are right and that we have gone about this more professionally than any other group MNCPPC has dealt with" and that "he supports completely what we are doing and the way we are doing it." When you consider his comments in view of his actions to correct Wynn's blunder....plus his ability to submit CTC favorable information in his staff reports, etc., and his willingness to assist us with the Retail Center issues, maybe we should hold off on a negative letter??

I know I sound as if I have argued both points, but I'm just not sure of the right action. Other thoughts?
Amy

Su **Re: Last Nights CTCAC Meeting**
Da 3/15/2005
To smithc@efdb.nci.nih.gov, nnagde@ENERGENconsulting.com, timdearros@comcast.net,
KShiley@PSC.GOV, Lfantle@aol.com

Again, though, I guess it's not about whether or not they take us "seriously"... I think maybe it has more to do with filing a formal complaint just so that Wynn's actions are noted on the record.

Here I go arguing both sides again!

Su **Re: Last Nights CTCAC Meeting**
Da 3/16/2005
To KShiley@psc.gov, smithc@efdb.nci.nih.gov, nnagde@ENERGENconsulting.com,
timdearros@comcast.net, Lfantle@aol.com

Not a bad idea just to mention that "we were extremely disturbed that staff had somehow forgotten to add the hearing to the work schedule....but that we were very appreciative of Michael Ma's responsiveness and coordination of a new meeting on our behalf..." ?

Su **CTCAC Information**
Da 3/19/2005
To StanWeightman@mrisc.com
File **C:\Documents and Settings\Presley\My Documents\CTCAC\CTCAC History.doc (47616 b)**
DL Time (TCP/IP): < 1 minute

Hello, Stan and Judith Ann.

Thank you so much, Judith Ann, for your return call the other day. I appreciated the call and want to let you both know that I understand completely why you would be upset about CTCAC (Clarksburg Town Center Advisory Committee) activities, based on the information (or lack thereof) that you had received to date.

I would like to apologize for the fact that we your names and email/phone numbers were not on our contact list. We were careful to hand-deliver meeting notices to every single resident in the community prior to each meeting held, in addition to having the meeting time/location information posted in the Gazette; however, we were only able to add to the list those residents who attended the meetings and provided their information. We did not have, prior to last week, information on owners who were not residents. Now that I have your information, I will definitely add your names to the list.

As I mentioned the other day, I want to provide you with information regarding the activities of the CTCAC to date, and the intent of the group, and to answer any questions you might have. I have attached a history of the CTCAC with summary information of our activity to date. Please let me know if you have questions or concerns, or if you would like further information. (It was very difficult to capture everything in written form in the history document!)

We will be holding a meeting during the week of 3/28 for the Bozutto residents, to address the serious allegations circulating, and hopefully to alleviate any concerns about the agenda of the CTCAC. We are in the process of finalizing a meeting location now and will send information to you once confirmed (we are targeting 3/29).

Thank you for your time and understanding,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Su **CTCAC Information**
Da 3/19/2005
To beforrest@earthlink.net
File C:\Documents and Settings\Presley\My Documents\CTCAC\CTCAC History.doc (47616 bytes)
DL Time (TCP/IP): < 1 minute

Hello, Ms. Forrest.

I have not yet met you personally, but I was given your email address from Carol Smith (CTCAC). My name is Amy Presley, and I am one of the "Co-Chairs" of the CTCAC group. I left a message for you, but wanted to send an email so that you would have some historical information about CTCAC formation and activities to date.

I am so sorry that you have felt excluded from our process to date. We believe that together all residents from the Clarksburg Town Center community and we would not want to exclude anyone! We are in full agreement with the Master Plan intent to create a neighborhood that encourages a wide choice of housing types for people of all ages, lifestyles, and physical capabilities. We are pleased that we have a good mix of condominiums, townhouses, and single family homes...and, we look forward to the addition of more condominiums. (In fact, we recently testified in support of Bozutto at a hearing to increase the number of units in their planned Manor Homes.)

I thought it might be helpful to send to you a history and activity summary of CTCAC. I have attached a document that captures as much as I could in writing. However, I would enjoy meeting with you for coffee or something to introduce myself personally and to answer any questions you might have about CTCAC and/or activities currently underway.

Thanks so much for your time and understanding. Please call me at your convenience if you would like to schedule a time to get together.

Sincerely,
Amy Presley

ps The CTCAC is planning a formal meeting for all Bozutto residents so that we can answer questions and, hopefully, alleviate concerns. The meeting time/location has not yet been finalized, but we are targeting March 29. We will let you know as soon as it is confirmed.

CTCAC History & Activities

The CTCAC (Clarksburg Town Center Advisory Committee) was formed in response to the Town Center residents' discovery of deviations by the developer (Newland Communities) to the Master Plan concept and Project Plan Guidelines. These deviations became apparent during a Newland Presentation in July of 2004, during which residents realized that the Retail Center as being proposed by Newland was severely flawed in design relative to the goals of the Master Plan, guidelines of the Project Plan and the concept marketed by the Developers and Builders. The specific issues relative to the retail center included:

- Center not pedestrian-friendly
- Severe reduction in retail and office square footage (250,000 square feet proposed in Master/Project Plan; Roughly 113,000 square feet proposed by Newland)
- Retail center configured in a "strip mall" configuration
- Not meeting Project Plan requirements for pedestrian-orientation and "unique" aspects of center to serve as focal point for Clarksburg and surrounding area (need for special attention to the design and tenants that the center will attract)

Following the July, 2004 meeting with Newland, notices were hand-delivered by Kim Shiley and Carol Smith to all residents in CTC, requesting their presence at an August 4, 2004 meeting to discuss the Retail Center issues. (The notices were posted on mailboxes and placed in entryways within the condominiums.) The meeting was held at the Hyattstown Fire Station with over 100 residents in attendance. The residents attending this initial meeting called for volunteers to form an advisory committee (CTCAC) to take action with MNCPPC and the developer to address the issues with the Retail Center and to work to ensure adherence to the vision and intent of the Master Plan. Several residents volunteered and those present "elected" the following volunteers:

- | | | |
|---------------|-------------------|------------------|
| • Kim Shiley | • Randy DeFrehn | • Jeff Lunenfeld |
| • Carol Smith | • Joel Richardson | • Tricia Larade |
| • Amy Presley | • Jen Jackman | • Lynn Fantle |
| • Tim Dearros | • Mark Murphy | • Dennis Learner |
| • Niren and | • Jerry and | • Ken Bullough |
| • Jaya Nagda | • Regie Barbour | • Susan Frimond |

It was confirmed that the purpose and intent of the CTCAC was to ensure adherence to the Master Plan and Project Plan (i.e. to represent the community in achieving what was promised – and what residents bought into – relative to the Project Plan).

Following the August 4, 2004 meeting, the CTCAC became very active in researching not only the intent of the Master Plan and approved Project Plan, but also the detailed parameters within Board-approved Project Plan Conditions and Findings, as well as the processes within MNCPPC for site plan submission and approval. As part of the process, we researched and read every document available on file with MNCPPC relative to Clarksburg Town Center. In doing so, we made ourselves aware of all requirements under the "Optional Method" of development for RMX2 zoning and the related requirements for complete compliance with the Conditions and Findings of the approved Project Plan #9-94004.

Several additional meetings were held by CTCAC with residents, with M-NCPPC and with Newland between August 2004 and March 2005. At each resident meeting, 100+ residents were in attendance (again, notifications were delivered by hand to each residence to encourage meeting attendance). We also posted meeting (February 24 and March 7) date/time/location information within the Gazette in the hopes of reaching more residents. Names/addresses/ phone/email information was requested at each meeting, but we were only able to add to a contact list the names that were provided at the meetings. Although our intent was to keep people informed through email updates in between meetings, the CTCAC did not have the resources or database structure to enable this. Based on the issues being uncovered, it was also determined that updates through the public CTC web site (managed by Newland Communities) were not appropriate. Therefore, we have had to rely on hand-delivery of meeting notices and updates provided at meetings rather than via email. (We have now entered names into a database and anticipate that we will soon be able to send out email updates.)

The CTCAC has been working with Newland Communities, through multiple meetings, to address the issues with the Retail Center. As a result of meetings and requests, Newland hired a new architectural team to correct the design flaws of the Retail Center plan previously presented to CTC residents. The most recent revisions to the Retail Center design were presented by Newland to the CTCAC on December 8th and February 3rd. Although the design was changed relative to "form" there were still issues regarding "functionality" (regarding the lack of adequate retail/office square footage and allocation of grocery store square footage relative to other office/retail space). CTCAC advised Newland of the outstanding issues and also commended Newland on the design changes made (the new design was pedestrian-friendly in nature and met some of the other Project Plan requirements that were lacking in the previous design).

The CTCAC corresponded back and forth on Retail Center issues with Newland and then scheduled a resident update for February 24, 2005. The February 24 meeting was postponed, due to snow, until March 7. At the March 7 meeting, residents were brought up to date on activities of CTCAC and current status of the Retail Center design. It is important to note that development of the Retail Center has not been delayed by the activities of CTCAC with Newland Communities. The Center was scheduled for groundbreaking at end of 2005/beginning of 2006 and, according to Newland Communities, is still on track pending Site Plan approval in the spring timeframe. Newland has advised that they will conduct a resident update meeting to present current plans for the Retail Center.

It was during the March 7 CTCAC/Resident update meeting that CTCAC was made aware of the concerns of condominium residents relative to information that was given to them in a meeting held by Clark Wagner of Bozzuto Homes. Apparently, information regarding CTCAC activity on height violation issues had been conveyed by Mr. Wagner in a way portraying CTCAC as deliberately exclusive of condominium residents, and also as desiring to have the condominium in violation torn down. Neither accusation is true.

In actuality, the history and request for appropriate height violation resolution is as follows:

- CTCAC discovered, based on the height definitions contained in the Board approved Project plan findings, that two of the Bozzuto condominiums (one already built and one approved through Site Plan review, but not yet built) as well as the proposed Craftstar 2 over 2's, exceeded these guidelines. The Project Plan outlined 45'4-story for residential buildings and 50'4-story for commercial buildings within CTC (These specific height limitations were set by M-NCPPC based on the need to ensure buildings in scale and compatibility with the historic district). The existing condominium, and the one scheduled for construction, exceeded the guidelines by as much as 8-12 feet.

- Having discovered the violation, the CTCAC notified M-NCPPC and the developer of the concern over the issue. Several meetings were held, one directly with Derick Berlage and CTCAC Co-Chairs (Kim Shiley, Carol Smith and Amy Presley). At this meeting it was discussed with Mr. Berlage that the CTCAC would have encouraged tearing down and re-building of the building (in accordance with Project Plan height specifications) if the building were not occupied. That was stated in order to communicate the severity of the violation. However, it was explicitly stated that the CTCAC did not want to penalize residents in any way, but instead was keenly interested in informing the builder/developer of the seriousness of the violation and ensuring that future violations were prevented.
- The action requested by CTCAC was a hearing by the Board to review the issue, rule on the violation, and determine, if appropriate, any compensatory action by the Developer/Builder on behalf of the community. This hearing has been set for April 14, 2005 (time to be confirmed).

It is important to note that the CTCAC is not working against Bozzuto, or against the ongoing development of CTC. In fact, the CTCAC testified in support of Bozzuto at the February 10, 2005 hearing for approval of their Manor Home site plans. This hearing was held to gain a site plan amendment to allow Bozzuto to increase their Manor Homes from the 9 units each proposed to 12 units each. The CTCAC, finding that the request was in agreement with the Objectives of the Project Plan (i.e. specifically to “encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations” - p9 of the CTC Master Plan) gave oral and written testimony in support of Bozzuto’s request. The amended site plans received approval at that hearing. Following is an excerpt from our testimony at that hearing (actual document available as public record from MNCPPC):

“The CTCAC supports the developer’s intent relative to the Manor Homes. We believe that the development of the Manor Homes, specifically the addition of supplemental units, is in compliance with the Master Plan objective to ‘encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations.’ We welcome the development of the Manor Homes, with the stipulation that they be built in accordance with the scale and character of the surrounding community.”

The CTCAC has been careful to advise and take action only in accordance with Project Plan objectives and requirements. We understand that in order to fulfill the objectives of the Project Plan, it is imperative for the developer and builders to adhere to the Project Plan Guidelines/Conditions and Findings. Our mission is solely to uphold the Clarksburg Town Center Master Plan and Project Plan, in an effort to protect the community interests and our collective investments.

Please know that the members of the CTCAC have spent endless personal hours reading, researching, meeting with M-NCPPC, developer and builders, and advising residents of findings. We have done our best to keep people informed and to represent, in good faith, the residents and owners who would otherwise not have known about serious issues that could impact their community and investment long term. We have done this at our own expense because the community means a great deal to us. We welcome all residents’ and owners’ input! We all bought into the vision of Clarksburg Town Center and we want to make sure that the vision becomes a reality. Developers and builders will eventually leave the area, but the community will remain. We want to make sure that that community becomes a viable and productive Town Center as was intended by the Master Plan.

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE

Kim Shiley, CTCAC Co-Chair

Carol Smith, CTCAC Co-Chair

Amy Presley, CTCAC Spokesperson

March 25, 2005

Ms. Catherine Matthews

Director

Upcounty Regional Services Center

Dear Cathy:

First, we want to thank you and Nancy Hislop for meeting with us recently to discuss concerns regarding the development of the Clarksburg Town Center town square/retail area. As we discussed, adherence to the Master Plan concept and Project Plan guidelines, especially with respect to the intended functionality of the Town Center, is of vital importance to us as a community.

The most recent design for the CTC retail area (as presented by Newland to the CTCAC in December, 2004) will not support the Master Plan intent to "create a lively and diverse" Town Center which will "be a strong central focus for the entire study area" (pp.42 and 44 of the Master Plan). The design presented by Newland does not fulfill, in the opinion of the CTC residents, either the intent of the Master Plan or the specific guidelines contained within the Project Plan. Issues of serious concern include the following:

- Reduction of Total Retail/Office Space

- The reduction of retail and office space in the new design to roughly 145,000 sq. ft. is unacceptable. It will not adequately provide for the mix of uses envisioned in the Master Plan/Project Plan as necessary to "create a lively and diverse place" or to "create a Town Center which will be a strong central focus for the entire study area."

Note: The Master Plan/Project Plan encouraged a total of 250,000 square feet of retail and office space (150,000 sq. ft. retail; 100,000 sq. ft. office). These guidelines were established with the intent of supporting a self-sustaining, pedestrian-oriented Town Center to serve the community and study area long term.

- The allocation of the reduced retail and office space is not supportive of the Master Plan/Project Plan and is unacceptable to the community. Currently proposed:
 - 63,000 sq. ft. allocated to the grocery store
 - 20,000 sq. ft. allocated to the Library (This is being counted by Newland as "retail" space, and deducted from total retail/office for the town center.)
 - 3,500 sq. ft. free-standing pad allocated for a drive-through bank
 - 7,500 sq. ft., pad site, allocated for a restaurant
 - 12,000 sq. ft. (two pad sites @6,000 sq. ft. each) allocated for retail (These pad sites back to Overlook Park and are single story structures.)
 - 6,500 sq. ft. adjacent to the grocery store/allocated for retail
 - 18,500 sq. ft. allocated for retail (single story in area perpendicular to pad sites; wraps from within shopping 'square' parking lot back towards library)
 - 8,500 sq. ft. allocated as "retail" (single story, area from across library up towards top of Overlook Park/below the proposed 3-stories of condo units)
 - 6,000 sq. ft. allocated as "office/retail" (below proposed 3-stories of condo units)
 - Overall ratio is unacceptable - 63,000 sq. ft. allocated for grocery store, with only 59,000 sq. ft. total allocated to retail/office.

Note: To date, Newland will not specify how much of the space will actually be allocated for office use. Although they have stated that Regency will work to use the space to create a "Bethesda Row" type of atmosphere, with dining as entertainment, the community does not believe that an adequate

amount of space is available overall for retail/office. We believe that the full 250,000 sq. ft. of space recommended in the Project Plan would be necessary to create and sustain a viable town center.

- **Grocery Store**

- The grocery store has a footprint of 63,000 sq. ft. We find that the planned grocery store is too large for the scale of the community and should be reduced to allow for other retail and/or entertainment space (as encouraged by the Master Plan to create a unique and lively focus).

Notes:

1. *The footprint of the grocery store (Giant) at Kentlands is 60,854 sq. ft. The footprint of the grocery store (Giant) at Milestone is 55,439 sq. ft. Why would the Clarksburg Town Center grocery store (proposed Giant) be larger than those? We do not need a grocer of that size to support this area. If so, then we also need retail proportionate to that of the Kentlands or Milestone.*
2. *If the grocery store is intended as the sole anchor to achieve a destination center draw, competition with the Cabin Branch and Clarksburg Village retail areas and grocer (to be built soon after Clarksburg Town Center) should be considered. Thought and commitment must be given to creating a unique draw to the Town Center retail area, such as providing a grocery store other than Giant (perhaps along the lines of a Whole Foods or other unique store), and considering ways to add entertainment space.*

- **Planned Residential**

- The addition of residential units within the retail area of the Town Square is not in accordance with the Master Plan/Project Plan and reduces the amount of office/retail space available. We suggest eliminating the residential units and/or reducing the residential units to provide for office space (2nd floor) above retail (1st floor) along Clarksburg Square Drive and General Store Drive.
- Overall, we believe that additional retail/office space should be provided along Clarksburg Square Drive (this could be accomplished by adding retail/office to the first floor of the additional two planned condo units along Clarksburg Square Drive).

As a community, we cannot support the most recent design presented to us by Newland. The concerns about Town Center functionality must be addressed. We appreciate the involvement to date by Nancy Hislop and you towards ensuring a successful Town Center. We believe that a meeting hosted by you, with M-NCPPC, Newland and CTCAC in attendance, would be very beneficial. It is our hope that you will work with us to bring the Town Center retail area back into alignment with the Master Plan concept and Project Plan recommendations.

Thank you for your time and assistance.

Sincerely,

Amy Presley (on behalf of the CTCAC)

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE

Kim Shiley, CTCAC Co-Chair
Carol Smith, CTCAC Co-Chair
Amy Presley, CTCAC Spokesperson

March 25, 2005

Ms. Catherine Matthews
Director
Upcounty Regional Services Center

Dear Cathy:

Thank you for taking the time to meet with us recently to discuss our concerns regarding the development of Clarksburg Town Center. As expressed, we are very disturbed to learn that the Library is not scheduled to be built until late 2009 or potentially even later. The Library was intended to serve as a focal point and a draw for the Town Center. Newland's new retail center design was crafted around the Library as the central draw and focus. The Library was intended to become an integral part of the community, making use of the Town Center square area, hosting events and drawing people in. If the Library is not ready in conjunction with the Town Center retail area (scheduled to break ground late in 2005/early 2006 for completion within 2006), there will not be the necessary draw to support a thriving Town Center.

Newland is currently circulating information to residents regarding the retail center development and stating that "soon you will be able to walk with your children to the Library." If the Library doesn't even break ground until 2009 or later, many of the current residents' children will be driving! As a community, we do not believe that the Town Center will be complete until the Library is built.

Our plea to you is for assistance in getting the Library built in conjunction with the Town Center retail area. Is there any way that the Developer can be encouraged to subsidize the construction of the Library? Or, is there a way for the County to expedite the process for construction of the CTC Library? We understand that there is a strong likelihood that Newland may be cited by M-NCPPC for current violations (including set-back violations and height violations) and that, if cited, they may also be fined in accordance with standard M-NCPPC procedures. We would also like for your office to investigate the potential to have a portion of such fines directed towards subsidizing the Library construction.

Please let us know if there is any other action that the CTCAC can take on behalf of residents to aid in expediting the Library construction process.

Thank you for your time and assistance.

Sincerely,

Amy Presley (on behalf of the CTCAC)

Su Re:
Da 4/3/2005
To KShiley@psc.gov, Shileykim@aol.com

Hello, Wynn.

Confirming our conversation of last Friday, I inquired about site plan approvals relative to Phase I #8-98001 (due to concerns that what was actually built in the community does not align with what was submitted with that approval). You stated that, according to the Board Opinion (and I recalled it to be item #38), all changes/approvals could be made at a staff level and as an internal process.

I asked what was provided to you by the developer and/or builders in order to receive approval for changes and you replied, "stamped drawings." When I asked you for copies of those drawings, you stated that you would not be able to assist me with obtaining them, as you were too busy, but that I could come by and find them myself. I understand that you are busy with your work; however, I also work full time and must go out of my way to your office to obtain them.

I also asked about your receiving documents relative to the upcoming height hearing and you answered, "I have received some letters from your folks"... "those with your point of view." I got the feeling, Wynn, that you were disturbed by my requests and also disturbed at receiving letters from CTC residents supporting "our view." As you know, the CTCAC has no view other than that of the Master Plan concept and approved Project Plan. It should come as no surprise that residents who bought into this community based on the Master Plan would expect the development ultimately to align with that plan and, therefore, would submit letters to that extent. Further, in order for us to support these Plans, we do require access to documents controlled by you. It is unfortunate that our requests involve your time and effort, but I am baffled by your seeming unwillingness to assist us, as you are the Staff person responsible for development review for CTC and, ultimately, a servant of the community at large.

I'm sorry for the short notice, but I will come by first thing Monday morning to pick up the "stamped drawings." I would appreciate your assistance in having them ready for me by _____ (Kim, put a time in here).



Clarksburg Town Center – Height Violation Threshold Hearing

April 14, 2005

DOCUMENT CHRONOLOGY

- MASTER PLAN & HYATTSTOWN SPECIAL STUDY AREA (Approved June 1994)
- DEVELOPMENT APPLICATION (November 1994)
- PROJECT PLAN #9-94004 (Approved May 1995)
- PRELIMINARY PLAN #1-95042 (Approved September 1995)
- SITE PLAN - PHASE I #8-98001 (Approved January, 1998)

Master Plan — Approved June, 1994

- “Ten Key Policies Guiding the Master Plan”:
 - **Policy #1** (p.16) - **“Town Scale of Development”**
 - “This Plan includes the Clarksburg Historic District as a key component of an expanded Town Center.”
 - **Policy #6** (p.26) -
 - “Plan proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District.”

Master Plan – Approved June, 1994

- “Ten Key Policies Guiding the Master Plan”:
 - **Policy #6** (p.26) -
 - “This Plan continues the historic function of Clarksburg as a center of community life. It will be part of an expanded Town Center.”
 - “Assuring compatibility of future development with the historic district has been a guiding principle of the planning process.”

Development Application — November 1994

- (Exhibit A) Submitted by Steven M. Klebanoff (Managing General Partner) Clarksburg Land Associates Limited Partnership and Piedmont Land Associates Limited Partnership
T/A Clarksburg Town Center Venture
- Attorney of record: Linowes and Blocher
- Proposed building height: "Maximum 50' "

Project Plan #9-94004 (Approved May, 1995)

- "Project Plan" set submitted by Clarksburg Town Center Venture as basis for approval of Project Plan (Exhibit B) shows "maximum" heights of:
 - Single Family & Townhome: **35'**
 - Multi-Family: **45'**
- Attorney of record: Linowes and Blocher

Project Plan #9-94004 (Approved May, 1995)

- Page 8: Finding #1

"The Planning Board finds that Project Plan #9-94004, as conditioned, meets all of the purposes and requirements of the RMX-2 Zone. A summary follows that compares the development standards shown* with the development standards required in the RMX-2 Zone."

**Note: The development standards proposed /shown by the developer for CTC; Standards upon which the Staff based it's opinion and the Board based its approval of the Project Plan.*

Project Plan #9-94004 (Approved May, 1995)

- Page 9: Finding #1 (continued) - Data Table shows what is "Required/Allowed" in the RMX-2 Zone versus what is "Proposed" for the Clarksburg Town Center
 - Required/Allowed:
 - Commercial: "4 Stories"
 - Residential: "4 Stories"
 - Proposed:
 - Commercial: "4 stories **(50')**"
 - Residential: "4 stories **(45')**"

Preliminary Plan #1-95042 (Approved September 1995)

- Preliminary Plan submission to M-NCPPC (Exhibit B) by Clarksburg Town Center Venture
- "Maximum Height" Definitions:
 - Single-Family & Townhomes: " **35'** "
 - Multi-Family: " **45'** "
- Attorney of record – Linowes & Blocher

Preliminary Plan #1-95042 (Approved September 1995)

- Page 1: "The underlying development authority, Project Plan No. 9-4004, was approved by the Planning Board on May 11, 1995, after two prior Planning Board meetings (held on April 6 and 20, 1995). The record for Preliminary Plan 1-95042 specifically includes the records from those prior hearings."
- Page 3: "The approval is subject to the following conditions": ...

Note: The Board recognizes the Project Plan as the Development Authority.

Preliminary Plan #1-95042 (Approved September 1995)

- Page 6 - Condition #14:
"Preliminary Plan 1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004. Each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable."

Site Plan Review #8-98001 (January 16, 1998)

- Site Plan Review submitted to Board on January 16, 1998 by Development Review Staff
- Noted "Adjustments to Project Plan approval" do not include any references to height adjustments
- Conformance to Clarksburg Master Plan (p.26)
 - "The proposed site plan will establish a strong identity with a traditional town character as called for in the master plan."

Site Plan #8-98001 (Approved January 22, 1998)

- Page 2 - "Montgomery County Planning Board finds:"
 - 1. "The Site Plan is consistent with the approved development plan or a project plan for the optional method of development.."
 - 4. "Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development."

Site Plan #8-98001

- Site Plan "Set" Submission (Exhibit D) by Clarksburg Town Center Venture to M-NCPPC
 - Initial submission December, 1997
 - Revised submission April, 1998
 - Final submission/approval March 24, 1999
- "Maximum Height" Definitions:
 - Single-Family & Townhomes: " **35'** "
 - Multi-Family: " **45'** "
- Attorney of record – Linowes & Blocher

Typical CTC Structures – Compatible with scale and character of Historic District



April 14, 2005

Prepared by CTCAC

15

Compatible with Scale and Character of Historic District?



April 14, 2005

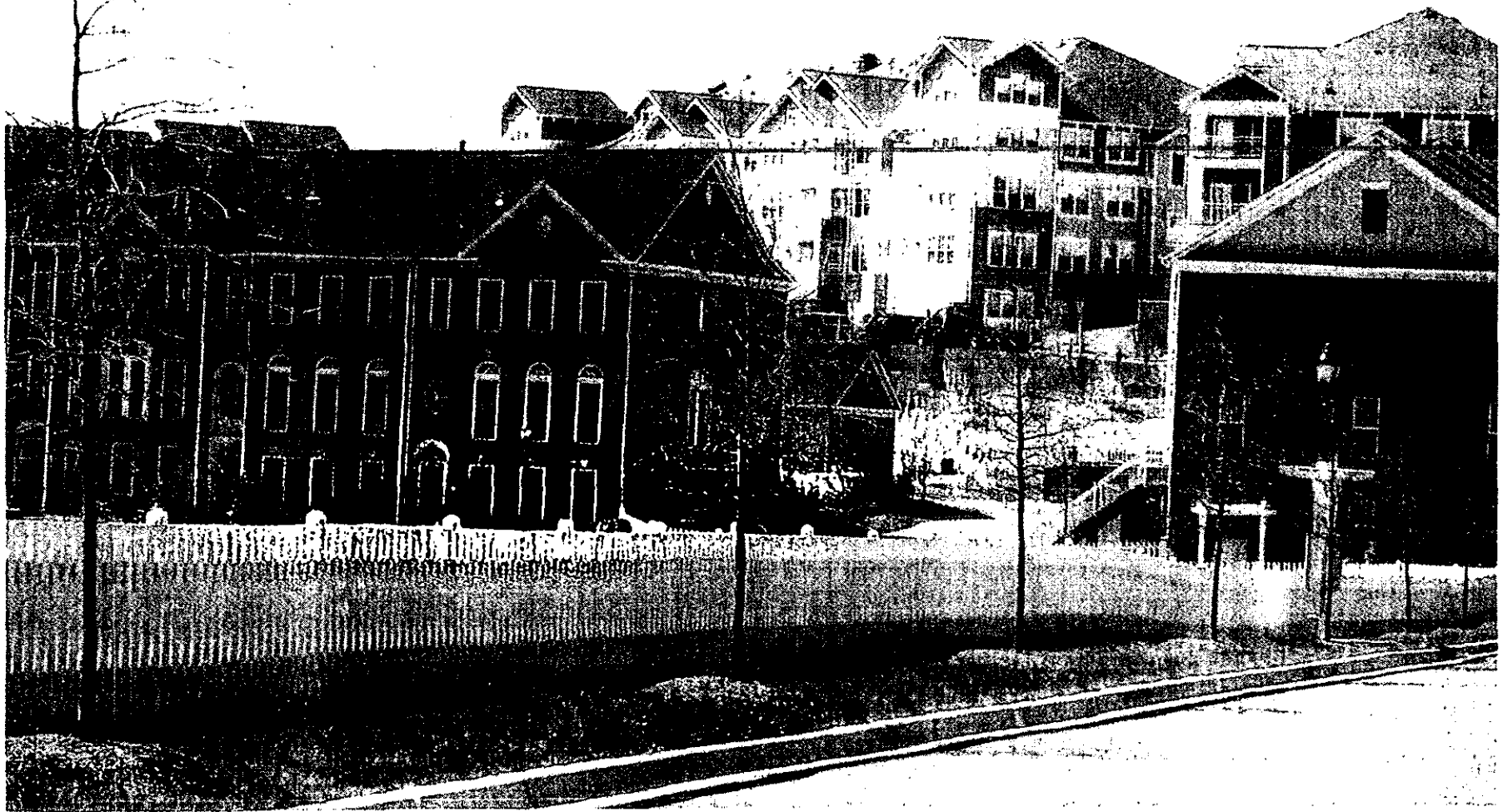
Prepared by CTCAC

16

Compatible with Historic District scale and character?
Compatible with existing and proposed adjacent structures?

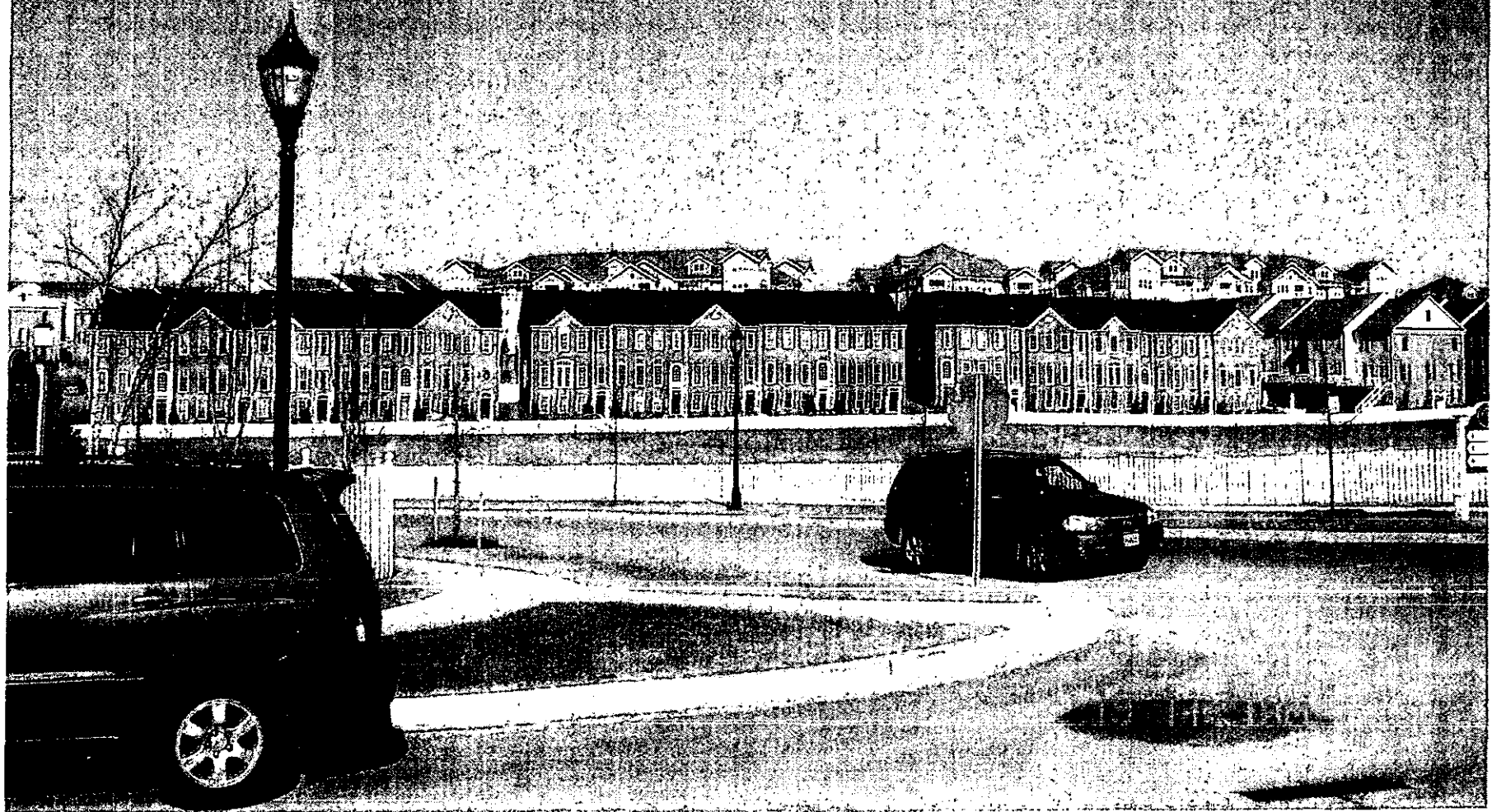


Compatible with Historic District scale and character?
Compatible with existing and proposed adjacent structures?



Compatible with Historic District scale and character?

Compatible in scale and character with adjacent structures?



Built on the highest point within the Town Center
Towering above other structures
Visible throughout the Town Center



PI 0350PM

HOW DID THIS HAPPEN?



April 14, 2005

Prepared by CTCAC

Site Plan Review (January 16, 1998)

- Questionable aspects of Site Plan Review submission to the Board:
 - Revised Data Table submitted by Staff with Review Documentation (Page 32)
 - Data Table shows "4 stories" as "Proposed" - Omits specific definition as contained in Approved Project Plan and Preliminary Plan

This omission of detail does not relieve the developer/builder from building those "4 stories" in accordance with the Approved Project and Preliminary Plans! (Though it could later be misleading to the Board.) Developer's Site Plan set for this submission still shows specific height "maximum" of 45'

Site Plan #8-98001 (Approved January 22, 1998)

- Page 7 – Site Planning, Landscaping and Lighting Approval condition #38:

“The applicant may propose compatible changes to the units proposed, as market conditions may change, provided the fundamental findings of the Planning Board remain intact and in order to meet the Project Plan and Site Plan findings.

Consideration shall be given to building type and location, open space, recreation and pedestrian and vehicular circulation, adequacy of parking, etc. for staff review and approval.”

Note: Does not give Staff authority to reduce height restrictions without due process (amendment hearing)

Site Plan #8-98001 (Approved January 22, 1998)

- There is no documentation on file with M-NCPPC regarding reduction of the height restrictions contained in the Approved Project Plan and Preliminary Plan
- There is no record of an amendment hearing regarding height restrictions
- There is no record of a “minor amendment” by Staff to alter height restrictions

Residents' & Citizens' Expectations

- Based on unarguable evidence contained within the Board-approved Project Plan, Preliminary Plan, and Site Plan, and actual drawing sets submitted by the developer showing a 45' maximum height for residential buildings, we expect a ruling of non-compliance.
- **Citizens expect the Board to issue a violation notice to the developer.**

Su **Friday, April 15 2005 - Follow-up**
Da 4/17/2005
To rose.krasnow@mncppc-mc.org
CC michelle.rosenfeld@mncppc-mc.org, Shileykim@aol.com, smithcar@mail.nih.gov,
catherine.matthews@montgomerycountymd.gov,
Councilmember.Knapp@MontgomeryCountyMD.gov
BC nnagda@ENERGENconsulting.com, timdearros@comcast.net, Lfantle

Hello, Rose.

I just wanted to thank you for responding to our request last Friday regarding the documents on file for Clarksburg Town Center. We appreciated your willingness to move all files to the care of your legal department, based on the issues and concerns we raised.

As stated by you, and confirmed with Michelle Rosenfeld, your office was unable on Friday to confirm to us whether or not the documents retrieved from Development Review represented all documents on file pertaining to Clarksburg Town Center or, specifically, to the amendments A-E for Site Plan #8-98001. We were advised that you had retrieved all available documents from Ms. Witthans office, but that you could not guarantee that there were not other existing documents in other locations. As we stated on Friday, this is of some concern to us.

In view of the recent height threshold hearing, and especially in view of our concern regarding the potential for documents to be misplaced or even "thrown away" by staff, we expressed to you our desire for copies of all available documents. We were able to begin our review and tagging process on Friday (indicating which of the documents we would like copied), but were unable to complete our work. Kim Shiley and I will continue that process on Monday, April 17.

We understand that you will check with Wynn Witthans on Monday morning to determine if other documents exist relative to Clarksburg Town Center, and that you will retrieve any such additional files and/or documents and store them with the others currently held in your legal department. As discussed and confirmed with Michelle, we will receive from the legal department on Monday a specific listing of any subsequent files or documents found, as well as information on the location from which any such files or documents are retrieved.

Thanks so much for your continued assistance. We look forward to seeing you on Monday.

Sincerely,
Amy Presley

Su **CTC Height Violations - Presentation**
Da 4/19/2005
To catherine.matthews@montgomerycountymd.gov
CC nancy.hislop@montgomerycountymd.gov, Councilmember.Knapp@MontgomeryCountyMD.gov,
Shileykim@aol.com, smithcar@mail.nih.gov, timdearros@comcast.net, [Lfantle](mailto:Lfantle@ENERGENconsulting.com),
nnagda@ENERGENconsulting.com
File **C:\Documents and Settings\Presley\My Documents\CTCAC\CTCHeightViolationHearing.r**
(9519104 bytes) DL Time (TCP/IP): < 2 minutes

Hello, Catherine.

Thank you for attending the hearing last week. As you know, in view of the evidence we presented, as compared with the lack of documentation presented by staff, the false and misleading statements made by staff, and staff's apparent overall unpreparedness, we are more than disturbed by the Board's ruling. (In regard to staff's lack of documentation, we would have expected that the Board would minimally have moved for a continuation until such time as real documentation or evidence could be presented.)

We have learned from M-NCPPC legal department that the Board is not *required* to issue an "Opinion" on their ruling of last Thursday and has elected not to do so. Therefore, we will not have a print record of their determinations. In order to have some sort of print record for our community, we will obtain a copy of the tape and will have that transcribed, by an "approved transcriptionist" at our own expense.

Since last Thursday, we have gathered additional evidence regarding statements made by staff which, once again, contradict actual documentation. With this supplemental information, we will of course be filing an appeal to the Board's ruling.

I am sorry that we were unable to provide you with a copy of our presentation last Thursday. Carol mentioned that you had requested a copy, so I have attached it with this email. I also left a voice mail message for you regarding scheduling of the follow-up meeting you requested to discuss specific issues relative to staff and documentation. (I have copied Mike Knapp on this email as he also expressed a desire to meet/follow-up these issues.)

From our perspective, it would be a tremendous help to meet with you prior to Friday of this week. (We are required to file our appeal by then.) Please give me a call to let me know a date that would be convenient for you.

Thank you,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Su **Confirmation**
Da 4/21/2005
To michael.ma@mncppc-mc.org
CC rose.krasnow@mncppc-mc.org, Shileykim@aol.com, smithcar@mail.nih.gov,
 timdearros@comcast.net, Councilmember.Knapp@MontgomeryCountyMD.gov
BC dfischer@abcbirds.org, Jessica_Stuart@americanchemistry.com, greg@beyonddesign.com

Hello, Michael.

Thanks for taking the time to meet with me and Kim Shiley this morning...especially in view of your hectic schedule at this time.

We wanted to confirm with you our conversation and our requests for the following:

- Letter from your legal department stating what additional CTC documents, if any, have been retrieved and from what locations since last Friday. (If no others have been retrieved since last Friday, we would like a letter stating that according to their information from Development Review and Staff, there are no other documents existing other than those currently housed within the legal department conference room.)
- Letter stating whether there exists on file within M-NCPPC ANY amendment by Staff to the height requirements for CTC (height requirements as contained within the approved Project Plan, Preliminary Plan and subsequent Site Plan).
- Letter detailing the status of the setback hearing that was initially scheduled for 4/14/05 and then was removed from the agenda. We want to know specifically any and all actions taken by Staff (or any that may have been taken by the Department of Permitting Services - if M-NCPPC is aware of such) since the time you initially notified us of the hearing. We want to know whether actions have been taken to waive the setback requirement to enable occupancy of the 2/2's which had initially been denied occupancy permits. We would also like to know the status on other buildings in violation of the setback requirement (as you discussed with us several weeks ago when you advised us that the developer and builders had come forward to acknowledge multiple other violations to setbacks in addition to the 2/2's which were denied occupancy).
- We would also like a written update regarding actions currently being taken within your department relative to discrepancies in documentation and other issues we discussed pertaining to Staff. Understanding that you are still in the process of discussing these matters with Rose Krasnow, we realize that it may take a couple of days before you are able to respond on this. If you could provide an interim email update, that would be greatly appreciated.

As we mentioned to you, based on our follow-up research of Staff's testimony given during the April 14 height violation Threshold Hearing, as well as several new pieces of evidence, we we will be submitting a request for reconsideration (under Section 11 of the Rules of Procedure for the Montgomery County Planning Board). Your assistance in providing the aboved referenced letters and information before close of business tomorrow, or written notification as to why you are unable to do so, will be greatly appreciated.

Sincerely,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Su **Request for Reconsideration**
Da 4/22/2005
To mcp-chairman@mncppc-mc.org
CC rose.krasnow@mncppc-mc.org, michael.ma@mncppc-mc.org,
 Councilmember.Knapp@MontgomeryCountyMD.gov, Shileykim@aol.com, smithcar@mail.nih.gov,
 jessicasteinhilber@yahoo.com, dfischer@abcbirds.org, dbfischer@starpower.net
BC timdearros@comcast.net, Lfantle@ENERGENconsulting.com, greg@beyonddesign.com
File **C:\Documents and Settings\Presley\My Documents\CTCAC\IP&P\HeightHearing\ReconsiderationRequest-CTCAC-4-22-04.doc** (32
 bytes) DL Time (TCP/IP): < 1 minute

Dear Chairman Berlage:

Attached please find an urgent Request for Reconsideration pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*. I am also sending a copy of this request via FAX to you to ensure that you receive a signed copy today.

We are in earnest relative to supplemental buildings within this development which are under construction and/or scheduled for construction and will also violate the Board-approved height limitations as set forth in the Project Plan, Preliminary Plan and Site Plan Signature Set #8-98001.

Your prompt response will be greatly appreciated.

Sincerely,
Amy Presley

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

April 22, 2005

The Honorable Derick Berlage Chairman
Montgomery County Planning Board 8787 Georgia
Avenue Silver Spring, Maryland 20910

Re: **Request for Reconsideration** of the Planning Board's April 14, 2005
Height Violation Threshold Hearing – Item #4: Site Plan Review No. 8-98001,
8- 98001B, and 8-02014, Clarksburg Town Center

Dear Chairman Berlage:

Pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*, the Clarksburg Town Center Advisory Committee (CTCAC) requests the Montgomery County Planning Board to reconsider its finding of April 14, 2005 that subject structures did not violate height restrictions set forth in Site Plan Review No. 8-98001, 8-98001B, and 8-02014. The Board incorrectly concluded that CTCAC's allegation of noncompliance did not have merit. CTCAC has recently discovered evidence that definitively documents incomplete, inaccurate, and/or misleading information contained in Ms. Wynn Witthans's April 8, 2005 staff report and April 14, 2005 presentation to the Planning Board. This information would have been vital to the Board's decision. In light of the seriousness of this new evidence, CTCAC requests that the Planning Board expeditiously grant our request for reconsideration.

Specifically, the Site Plan Enforcement Agreement (May 13, 1999) for Site Plan No. 8-98001, as signed by both Linowes & Blocher and the Developer, validates that the entirety of Clarksburg Town Center (CTC) Phase I was subject to Site Plan No. 8-98001 Signature Set and any amendments thereto. The Site Plan Signature Set No. 8-98001 is required to comply with Project Plan No. 9-94004, which includes height restrictions of 35' for single family residences and town houses and 45' for multi-family units. These height restrictions were proposed, and approved by the Planning Board in the Project Plan and become incorporated into the Site Plan through Condition #14 of the Project Plan.

Subsequent to Planning Board approval of the Project Plan, which includes height restrictions, Planning Board staff altered the Data Table containing the specific height restrictions to show only the general 4 story height restriction. This altered table was the basis, in part, of the Planning Board's April 14th decision. Importantly, this change was not considered or approved by the Planning Board. Therefore, the Board-approved specific height restrictions are still binding.

The fact that the Site Plan Signature Set No. 8-98001 remains valid for the subject properties discussed at the April 14 hearing, and the height restrictions have not been amended, completely contradicts testimony presented by Ms. Witthans from Development Review. Furthermore, this fact is misconstrued on page 8 of the April 8th Staff Report.

In light of this new information, CTCAC requests the Planning Board to expeditiously reconsider its decision of April 14, 2005. With no valid amendments to relieve the Developer from the requirements set forth under Site Plan No. 8-98001, the Developer has breached the Site Plan

Enforcement Agreement and violated the "Certified Site Plan" referenced within that Agreement. Thus, there is ample evidence to support CTCAC's allegation of noncompliance.

Sincerely,

Amy Presley
(on behalf of CTCAC)

cc: Fischer & Steinhilber

Su **CTC Height Violations/Board Ruling/Inaccuracies**
Da 4/26/2005
To Marlene.Michaelson@MontgomeryCountyMD.gov
CC Councilmember.Knapp@MontgomeryCountyMD.gov, Shileykim@aol.com
File C:\Program Files\America Online 8.0\misc\temp\DerickBerlage12-7-00.ZIP (9293370 bytes)
Time (TCP/IP): < 2 minutes

Hello, Marlene.

Thank you for taking the time to discuss with me the recent M-NCPPC Board hearing on height violations within the Clarksburg Town Center development. As we discussed, the CTCAC (Clarksburg Town Center Advisory Committee) has been working on this issue since August, 2004 (when we first officially brought it to the attention of M-NCPPC staff, CTC developer, and Council).

I have attached for you some of the documentation you requested, including our letters to Chairman Berlage and follow-up to Staff's initial response, as well as our presentation from the April 14 hearing on the issue. I have also attached a copy of our reconsideration request letter, which was sent to the Chairman on Friday, April 22nd.

The citizens of Clarksburg and residents of the Town Center are very concerned by the failure of the Board to uphold or enforce the requirements set forth in the Board-approved Project Plan and Preliminary Plan. As you know, the Project Plan is the recognized "underlying development authority" for development within the RMX-2 zone under "optional method" of development. The Project Plan specifically addresses height, as does the Preliminary Plan (45' for multi-family buildings). The Site Plan signature set, as submitted by the developer, contains a height data table which also reflects 45' maximum multi-family buildings and 35' for townhouses and single family houses.

The heights of the condominium buildings in question (according to the developer) are 50' 3" and 53' 7" (we still do not have an authorized surveyor's height for the buildings). Additionally, most of the townhouses in the development have been built at 40' and above.

The Development Review Staff person (Wynn Witthans) presented to the Board (during the April 14 hearing and several times prior regarding the height issue) misleading information and incomplete and/or reconstructed documentation. The CTCAC has tangible evidence of these actions. We presented such information as we had regarding this to the Board prior to the April 14 hearing. Since the hearing, we have retrieved from DPS and other sources supplemental information and evidence that we did not have prior to the hearing. We intend to present this to the Board in a reconsideration hearing and/or via civil proceedings.

The developer/builders failed to comply with Project Plan/Preliminary Plan requirements and knowingly violated site plans. The Board, in its ruling of April 14, failed to uphold the Project Plan and Preliminary Plan requirements. Equally disturbing, the Board failed in its responsibility to acknowledge violations and issue a ruling of non-compliance to the developer/builders for such violations. The citizens are disturbed by the Board's ruling and by the apparent lack of adequate checks and balances within M-NCPPC.

I hope this information is helpful to you. Please feel free to call me if you have further questions or need clarification on information attached. Thank you for your interest and assistance.

Sincerely,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Supplement to Request for Reconsideration

4/27/2005

mcp-chairman@mncppc-mc.org

dbfischer@starpower.net, jessicasteinhilber@yahoo.com

C:\Documents and Settings\Presley\My Documents\CTCAC\IP&P\HeightHearing\Supplementto4-22-05ReconsiderationRequest-CTCAC-4-27-05.doc (31744 bytes) DL Time (TCP/IP): < 1 minute

Dear Chairman Berlage,

Attached is a supplement letter to the CTCAC's April 22, 2005 Request for Reconsideration. I am sending a copy of the letter to you via email to alert you to our supplemental information. The hard copy of the signed letter and attachments was delivered to Michael Ma today for hand delivery to you.

Please contact me if you require further information prior to the Board's review of this request.

Sincerely,

Amy Presley, CTCAC
301-916-7969 (office)
301-526-7435 (mobile)

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

April 27, 2005

The Honorable Derick Berlage
Chairman
County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Montgomery

Re: Supplemental Information pertaining to Request for Reconsideration
of the Planning Board's April 14, 2005 Height Violation Threshold Hearing --
Item #4: Site Plan Review No. 8-98001, 8- 98001B, and 8-02014,
Clarksburg Town Center

Dear Chairman Berlage:

As you are aware, Pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*, the Clarksburg Town Center Advisory Committee (CTCAC) submitted to the Board, on April 22, 2005, a Request for Reconsideration. Since that time, we have received additional documentation and evidence supporting our claims and worthy of review by the Board.

We have attached with this letter a copy of the Site Plan for Permit #301788 (Bozzuto "Bldg. #3" discussed during the April 14, 2005 hearing) as retrieved from DPS. We have also attached a copy of the "MC Department of Permitting Services Building Review Detail - Page 1" denoting the date of review and approval by M-NCPPC.

Regarding these documents, please note the following:

- 1) The Site Plan clearly shows the height Data Table (the same Data Table from the Site Plan Signature Set #8-98001) with limits of "35' maximum" for single family homes and townhomes and "45' maximum" for multi-family buildings.
- 2) The Builder (Clark Wagner for Bozzuto), the Surveyor (Ronald Collier) and the Landscape Architect (Les Powell for CPJ & Associates, Inc.) all signed this document with height limitations apparent.
- 3) The Site Plan establishes that a "clean" copy of the Site Plan (i.e. no line drawn through the height restrictions in the Data Table) was in existence and received by DPS as late as April of 2003, and indicates that the Permit was drawn against a "clean" copy of the Site Plan.
- 4) The information contained in the Site Plan and Building Review Detail contradicts information presented by Staff and evaluated by the Board in its conclusion of "ambiguity" or "silence" relative to specific height restrictions for the Site Plan in question. This "ambiguity" was the basis, in part, for the Board's ruling (please refer to tapes of the April 14, 2005 hearing).

(continued)

CTCAC

April 27, 2004

Supplement to Request for Reconsideration

Page Two

We have reviewed these documents (and their implications) with M-NCPPC Legal Counsel, Tariq El-Baba, as well as Chief of Development Review, Rose Krasnow, and Director of Development Review, Michael Ma. We have also provided to Tariq El-Baba, via Michael Ma, copies of the same.

In light of this compelling supplemental support of our claims, the CTCAC respectfully requests immediate action by the Planning Board to reconsider its decision of April 14, 2005. Once again, we would like to remind the Board that we have been presenting valid information on the height violation issue to M-NCPPC since August of last year. We have, on multiple occasions, requested issuance of a Stop Work Order as provided for under Montgomery County Zoning Ordinance Sec.59-D-3.6. Yet, buildings in violation of the clearly defined Project Plan height restrictions and Signature Site Plan #8-98001 Data Table have continued to be built without intervention. Delay in rectifying this situation has been damaging to Clarksburg Town Center and to the citizens of Clarksburg. We look to the Board to uphold the approved Project Plan and to move quickly to rectify the situation.

Sincerely,

Amy Presley
(on behalf of CTCAC)

cc: Fischer & Steinhilber
Marlene Michaelson, County Council

CTCAC-Supplemental Information

4/27/2005

Marlene.Michaelson@MontgomeryCountyMD.gov

Mike.Knapp@MontgomeryCountyMD.gov

C:\Documents and Settings\Presley\My Documents\CTCAC\IP&P\HeightHearing\Supplementto4-22-05ReconsiderationRequest-CTCAC-4-27-05.doc (35840 bytes) DL Time (TCP/IP): < 1 minute

Hello, Marlene.

Attached is a copy of the latest letter to the Board regarding supplemental information discovered since the time of submission of our "Request for Consideration" letter (4-22-05). The attachments noted within the letter are hard copies of both the Site Plan and related "Building Review Detail" sheet from DPS, so I am unable to attach them with this transmission.

I would like to review these documents, along with all others pertaining to this situation, with you at your earliest convenience. Based on the seriousness of our situation and the questions regarding integrity of procedures and accountability, the CTCAC would like to present information before the PHED. Thank you for your assistance on this.

Sincerely,
Amy Presley

LAW OFFICES OF

KNOFF & BROWN

401 EAST JEFFERSON STREET

SUITE 206

ROCKVILLE, MARYLAND 20850

(301) 545-6100

FAX: (301) 545-6103

E-MAIL KNOPF@KNOPF-BROWN.COM

WRITER'S DIRECT DIAL

(301) 545-6104

NORMAN G. KNOFF

July 13, 2005

VIA EMAIL AND REGULAR MAIL

[michele.rosenfeld@mncppc-mc.org]

RECEIVED
JUL 14 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Michele Rosenfeld, Esq.
Associate General Counsel
The Maryland National Capital Park
and Planning Commission
Office of General Counsel
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: **Clarksburg Town Center – Preliminary Plan of Subdivision/
Enforcement Proceedings**

Dear Michele:

You have requested the position of my client, the Clarksburg Town Center Advisory Committee ("CTCAC"), regarding the possibility of the Board postponing the hearing scheduled for Thursday, July 21, 2005, on the extension of time of the preliminary plan of subdivision. The preliminary plan of subdivision expired many months ago and apparently the Board has delayed until Thursday the public hearing on an extension due to the enforcement proceedings relating to Clarksburg development. My client's position is based upon its understanding of the relevant law and facts.

The Preliminary Plan of Subdivision, as with the Project Plan, Site Plan, and Site Plan Enforcement Agreement, all have express specific provisions governing the Clarksburg development, including height limitations of 35' for single family detached homes and townhouses, 45' for multiple dwelling units, and 10' front yard setbacks. All of these approved plans constitute "Planning Board Action" under §50-41(a)(5). A violation of any of the terms of these plans therefore subjects the violator to enforcement sanctions by the Planning Board. §50-41(b)(1).

To date, the Board has found violations of the height and setback requirements. A consideration of the time extension of the validity of the preliminary plan therefore must also involve consideration of sanctions for violating the plan as well as amendments to the plan to remedy violations should it be determined to extend the plan.

My clients have made clear in prior written communications with the Board, as well as oral testimony at the recent enforcement hearing, that as a matter of law as well as sound public policy, sanctions should not be determined, nor remedial amendments to


Michele Rosenfeld, Esq.
July 13, 2005
Page 2

plans adopted *until the Board has made a determination of all violations and their impact on the Master Plan, the Board approved plans, and the residents of the Town Center.* For example, our clients have presented substantial credible evidence of violations other than height and setbacks, such as the failure of the developers/builders to implement "O" Street as called for in various plans, including the preliminary plan of subdivision. Any extension of the preliminary plan of subdivision must consider at a minimum sanctions and amendments to that plan in an effort to remedy the situation.

Since the Board will not have made the necessary findings on all violations by July 21, 2005, we agree that the hearing on the extension of the preliminary plan should be postponed. *However, we believe that the postponement should be no later than the July 28th session of the Planning Board, when already scheduled by the Board is an action on sanctions arising out of violations found by the Board at its July 7th session. At the July 28th session, the Board should first hold further hearings on all other violations, make findings as to those violations, propose a remedial plan to mitigate the violations to the maximum extent possible; and only then consider whether to extend the preliminary plan and if so, what new conditions should be made part of any extension.*

We thank you for consideration of our views.

Sincerely yours,



Norman G. Knopf

cc: Derick Berlage, Chairman, Montgomery County Planning Board
and all members of the Board
Montgomery County Council
Charles Loehr, Director
Rose Krasnow, Chief, Development Review
John A. Carter, Chief, Community-Based Planning
Barbara A. Sears, Esquire
Todd D. Brown, Esquire
Timothy Dugan, Esquire
Clarksburg Town Center Advisory Committee

RECEIVED
1202
JUL 14 2005

MCP-Chairman

From: Synergiesinc@aol.com

Sent: Thursday, July 14, 2005 2:13 PM

To: MCP-Chairman

Subject: URGENT: CTCAC Correspondence for Today's Board Meeting

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dear Chairman Berlage:

Attached please find a letter from the CTCAC to the Board for consideration at your Board meeting today. We have also sent a copy of this letter via FAX.

Your review of this information with the Board Commissioners today will be greatly appreciated.

Sincerely,
Amy Presley (on behalf of the CTCAC)

7/14/2005

Clarksburg Town Center Advisory Committee

July 14, 2005

Montgomery County Planning Board
C/O The Honorable Chairman Derick Berlage
The Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Chairman and Planning Board Commissioners:

We, the Clarksburg Town Center Advisory Committee (CTCAC), are hereby reaffirming the formal complaints as voiced by Ms. Amy Presley at the hearings on July 7, 2005 with regard to the numerous violations in addition to the two (height and setback) on which the Board ruled that day. For the convenience of the Board, we have summarized these additional violations, issues and discrepancies below:

1. **"O" Street and the "Pedestrian Mews."** The approved Site Plan #8-98001 and the Site Plan Enforcement Agreement explicitly included details for this pedestrian vista near the historic Church. The Developer has violated these provisions in failing to construct "O" street as shown on the Site Plan, in constructing a road in place of the Pedestrian Mews (lawn panels and John Clark Memorial), and in location/construction of townhouses within the area intended for "O" street.
2. **Phasing of Amenities.** Over 700 building permits have been issued to date, while community-wide facilities have not been completed and turned over the HOA, as committed by the Developer within the Site Plan Enforcement Agreement. The Site Plan Enforcement requires that "All community-wide facilities within Site Plan 8-98001, must be completed and conveyed to the Association no later than the earlier of the receipt of a building permit for the 540th Lot/Unit or..." The Board's obligation under the Site Plan Enforcement Agreement was to stop the issuance of building permits until the violation was cured. To date, the Board has neither reviewed nor taken action on this issue.
3. **MPDU Plans.** CTCAC has indicated that calculations regarding MPDU phasing (as submitted to CTCAC within the MPDU Phasing Calculation Plan) are not accurate with respect to what currently exists. Improper plans will lead to a situation where MPDU units are segregated. Such segregation will go against the basic concept of MPDU housing integration. The potential MPDU violations must be investigated and remedied.
4. **Discrepancies regarding Site Plan for Phase II.** The Phase II Site Plan "Signature Set" appears to have been signed by a Board designee on October 14, 2004 after many of the homes in Phase II were permitted, constructed and occupied. These site plan documents do not contain height information (as is necessary on any valid Site Plan according to Montgomery County Code). Further, based on other information as presented by CTCAC, authenticity of this set of documents has been seriously questioned. A review of the supplemental information and hearing on this issue is mandatory.

5. **Inspections related to Site Plan Enforcement Agreement.** The Developer appears to have failed to issue notification of request for inspection by the Board (as required by Site Plan Enforcement Agreement #8-98001), and the Board appears to have failed to perform its obligation pertaining to general inspections as outlined within the Site Plan Enforcement Agreement. The status and records related to such inspections were requested by the CTCAC.
6. **Altered Documentation.** The CTCAC turned in to the Board two supplemental documents (signed by Wynn Witthans). These documents were "before" and "after" documents as with the document (Phase I B Part 3) that Wynn Witthans previously admitted to having altered after our notification to her questioning height limitations, after buildings were built and occupied, but prior to the initial April 14, 2005 hearing. As with the document Ms. Witthans admitted to altering, these documents also have a full, unchanged data table on the first set, while the second set contains a line through the height information along with the hand-written notation of "4 stories". CTCAC submitted these documents to the Board, requesting investigation and reporting back to CTCAC.
7. **Pattern of Developer Violation.** CTCAC noted that indeed there seemed to be a conclusive pattern of Developer violations, versus merely an "unintentional" violation of heights and setbacks. It was requested of the Board to review all violations/allegations in order to accurately determine the scope of violations and assess intent.
8. **Sanctions for Violations.** CTCAC implored the Board NOT to move forward with either grandfathering units "under contract" or imposing sanctions until such time as they understood the total scope of violations and the impact to the Town Center.

The CTC residents have noted with deep disappointment that, despite CTCAC's urging of the Board to consider the additional violations prior to considering sanctions, the Board proceeded to schedule a sanctions hearing for July 28th on the height and setback violations. Without consideration of the merit and impact of additional violations, and the pattern established by the Developer in continued violation, the Board cannot possibly rule appropriately on existing violations. Treating violations in a piecemeal fashion will not only unnecessarily prolong the process, but will also result in further damage to the community – with diminished hope of remedial potential. Therefore, we reiterate in this letter the necessity for the Board to hear and rule on ALL violations prior to issuing sanctions.

We request that the Board hear and rule on ALL items at the July 28th hearing (i.e. prior to ruling on sanctions). If the Board is not prepared to hear and rule on all items by July 28th, the hearing must be postponed to the earliest possible date *prior* to the Board's summer recess. We want to stress that the failure by the Board to consider all of the issues and problems as requested, prior to ruling on sanctions, will appear negligent to the residents and community at large. We are deeply concerned about the ambiguity embedded in the Board's July 7th decision to "Grandfather built and occupied units and units under construction and under contract."

Certainly we believe that grandfathering the built and occupied units and units under construction and contract, is perhaps a necessary approach. However, such buildings, their location and impact on the Town Center, have not been identified. When such information was requested, even the Board's Staff acknowledged that they do not have clear and detailed information regarding these buildings. Thus, the board did not have all the facts before making its decision. As we have witnessed in the recent past, such an ambiguous decision is nothing but an invitation to the Developer and Builders to further abuse the system. We ask you to reconsider the decision in light of impact to the community. In doing so, the Board will need to be very specific in terms of what buildings are included, their addresses/locations, the date each contract was signed, the date of settlement (if any), current status and appropriate plans for mitigation based on the impact of each unit to the Town Center.

Additionally, with reference to the fines proposed by the Staff, we are outraged that Staff's recommendation would enable the developer and builders to get away with fines that are roughly 1/1000th of the price paid by the homeowners. The profits made through these illegal construction activities, on the other hand, are many fold those amounts. Elected officials have, as noted in recent Washington Post and Times articles, expressed the need for greater fines as a deterrent to Developers against future violation of legally binding Site Plans and development commitments – this being said regardless of whether violations were "intentional" or not. The CTCAC and Clarksburg Community expect a much stiffer penalty than that proposed by the Staff.

The Board must not only issue greater fines, but must also be prepared to present a mitigation strategy for the Developer/Builders to ameliorate the damage already done, and to prevent any further damage, within the Town Center. It is imperative that this strategy and requirements of the Developer/Builders be shared with the public at the July 28th hearing. As stated in our presentation on July 7, 2005, the violations such as the "disappearance of the pedestrian mews" are very clear when the existing construction is compared to the approved site plans and the enforcement agreements. Other areas of violation (as outlined above) may need to be investigated further. In any case, given that there are at least three or more serious violations, it does further establish *a pattern of violations* committed by the Developer and the Builders. We commend Chairman Berlage's commitment (as stated at the July 7, 2005 hearing) to "throw the book" at the Developer/Builders should he determine that violations were intentional. We expect Chairman Berlage to act on that commitment as a means of re-establishing the faith of citizens in the Board, its planning processes, and enforcement on behalf of the citizens.

Please acknowledge the receipt of this letter and respond to the CTCAC regarding a schedule for the upcoming hearing(s).

Sincerely,

Amy Presley, Kim Shiley, and Carol Smith (Co-Chairs), on behalf of CTCAC

cc: Montgomery County Council
Knopf & Brown
Delegate Jean Cryor
Senator Robert Garagiola
Tim Craig, Washington Post
Jon Ward, Washington Times
Susan Singer-Bart, Gazette

Krasnow, Rose

From: shileykim@aol.com
Sent: Friday, July 15, 2005 5:50 PM
To: Ma, Michael; Krasnow, Rose
Cc: Synergiesinc@aol.com; smithcar@mail.nih.gov; brown@knopf-brown.com
Subject: July 21st Agenda

Hi, Michael,

Thank you for returning my call today regarding the Addendum to the July 21, 2005 Planning Board Agenda and more specifically to item #11, Project Plan Review No 9-94004A, Clarksburg Town Center.

You confirmed that this would be a 5 minute item before the Board; that no testimony and no items other than staff's recommendation for an extension of review period would be heard.

As I understand, and as you confirmed, when an applicant files an amendment application it must be presented before the Board within 90 days or be extended. You stated to me that this request for an extension would carry forward the Amendment Application until September 15th.

Your confirmation of this understanding will be greatly appreciated.

Kim Shiley
on behalf of CTCAC

8/13/2005

Krasnow, Rose

From: Krasnow, Rose
Sent: Friday, July 15, 2005 6:09 PM
To: 'shileykim@aol.com'
Subject: RE: July 21st Agenda

If all in case you didn't hear back from Michael, your email address is correct.

Kim

-----Original Message-----

From: shileykim@aol.com [mailto:shileykim@aol.com]
Sent: Friday, July 15, 2005 5:50 PM
To: Ma, Michael; Krasnow, Rose
Cc: Synergiesinc@aol.com; smithcar@mail.nih.gov; brown@knopf-brown.com
Subject: July 21st Agenda

Hi, Michael,

Thank you for returning my call today regarding the Addendum to the July 21, 2005 Planning Board Agenda and more specifically to item #11, Project Plan Review No 9-94004A, Clarksburg Town Center.

You confirmed that this would be a 5 minute item before the Board; that no testimony and no items other than staff's recommendation for an extension of review period would be heard.

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Your confirmation of this understanding will be greatly appreciated.

Kim Shiley
on behalf of CTCAC

8/13/2005

LAW OFFICES OF
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ROCKVILLE, MARYLAND 20850
(301) 545-6100

E-MAIL LAWFIRM@KNOPF-BROWN.COM

FAX: (301) 545-6103

July 27, 2005

VIA EMAIL

rose.krasnow@mncppc-mc.org

Rose Krasnow, Chief
Development Review
The Maryland National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: **Clarksburg Town Center**
Site Plan Review Nos. 8-98001 and 8-02014

Dear Ms. Krasnow:

On behalf of the Clarksburg Town Center Advisory Committee ("Committee"), I request that you promptly provide me information that in large part should be in your possession by now, based upon statements you made at the July 7th hearing on the above-referenced matter.

The Committee needs detailed, unit-by-unit building height information for all enclosed (partially built) or fully constructed residences in the CTC. Since the hearing, I have received only one set of height data, that from counsel for Miller and Smith, relating to 124 fully built townhouses. The Miller and Smith response is, for the most part, a model for what we would hope to get from all the builders: (1) a memorandum from the engineers describing its height determination methodology; (2) a detailed spreadsheet disclosing, by identified unit, the measurements and the computed height, and (3) an indication of which units did not use a street elevation as the base point for height. Nevertheless, the Committee needs slightly more unit-specific information: (a) the centerline road elevation data in cases where, either as of today or in the future, building height has been (or will be) measured with reference to a "terraced wall;" and (b) an indication of whether, as built, the unit includes either a basement or a cellar (and, if so, which), as those terms are defined in the Zoning Ordinance.

At the hearing you stated that building height information was being collected from the builders. Chairman Berlage stated that this information was to be made available to the Committee and the public. If it is provided to us from all developers at the level of detail described above, the Committee will regard the Chairman's

Rose Krasnow, Chief
July 27, 2005
Page 2

commitment as fulfilled. I can assure you that all this information is highly relevant to the yet-to-be-resolved sanctions issues, not the least of which is the Committee's strong disagreement with your statement in your Plan of Compliance Memorandum that "it is difficult to find that extensive damage to the community has resulted in the 'as built' environment in Clarksburg." Id. at 3.

As I did before the issuance of your last set of staff reports on this matter, I hope to provide you in advance with a detailed statement of the Committee's views on the issues that will be before the Board at the adjourned hearing in September. In order to meet that goal, the Committee needs all the building height information as soon as possible. To expedite the process, I am sending a copy of this request to all parties involved.

Your cooperation in ensuring that our information needs are met is greatly appreciated. Please let me know when to expect a response.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dave Brown", with a long horizontal flourish extending to the right.

David W. Brown

cc (all by email):

Michele Rosenfeld, Esq. ✓
Charles Loehr, Director ✓
Robert G. Brewer, Jr., Esq. ✓
Barbara A. Sears, Esquire ✓
Todd D. Brown, Esquire ✓
Timothy Dugan, Esquire ✓
Stephen Z. Kaufman, Esq. ✓
Clarksburg Town Center Advisory Committee ✓



May 31, 2005

Stephane Duquesnoy
12917 Clarks Crossing Drive
Clarksburg, MD 20871

Re: 23914 A CATAWBA HILL DRIVE -0351

Dear Stephane Duquesnoy:

Please accept this as Seller's notice that the professional staff of the Montgomery County Planning Board's (the "Board") has opined to Seller c/o Seller's counsel that the proposed height of the Condominium building (in which the above-referenced Property was to be contained) exceeds the maximum permissible height for buildings of its type approved for construction at Clarksburg Town Center project (the "Project"). This is a matter we reasonably and honestly believed had been taken care of by the land developer. That is the entity from whom we purchased the subject building lot and which approved this building type for our construction at this Project. Indeed, that reasonable and honest belief was further reinforced by the separate County permitting authority ("DPS"), which agency approved Seller's architectural plan for this building type and has issued several prior building permits to construct essentially the same building elsewhere at this same Project. DPS has also allowed lawful occupancy on several of those nearly identical buildings at this Project. Nonetheless, a local citizens group has complained and, after investigation, the planning staff for the Board has now advised Seller that this building type violates the terms of the approved Site Plan regarding maximum building height.

While Seller does not concede the Board's position in that regard, nor can Seller ignore what it has been advised by the Planning Staff would be seen by the Board as a Site Plan violation if Seller proceeded to construct this allegedly violative building. Accordingly, Seller will not move forward with construction of the referenced improvements that comprise the Property described in your Condominium Sales Agreement ("Contract") unless and until expressly approved by the Board. Because that may not ever happen, Seller is hereby extending to you a right to cancel the Contract, so that you (its valued customer) will have the maximum opportunity to take advantage of other housing opportunities that may be available. If you choose to exercise this gratuitous option, please advise your sales representative and you will be refunded your deposit in return for a release. So that we can keep track of which customer(s) who contracted for a unit in this building will elect to cancel (and which will remain, despite these intervening events), this option to cancel will automatically expire on June 30, 2005 if not acted on before then.



Page 2

Please note that regardless of what you decide in this regard, Seller could still decide that *your Contract must be cancelled* under the terms of Contract paragraph 18(a). All of Seller's rights and entitlements to make that election at a future date will be reserved, regardless of what you decide in regard to this Buyer cancellation option.

Regardless of what you decide in this regard, we appreciate your business and sincerely regret any inconvenience or other impact this unavoidable circumstance has caused. If you elect to cancel and would like information on alternative Craftstar affiliated communities, your sales representative can provide you that information.

Sincerely,

T Center LLC

by Craftstar Homes, Inc., Managing Member

Via Certified Mail/Return Receipt Requested

cc: The Honorable Mike Knapp

Michele M. Rosenfeld, Esquire

Charles R. Lochr, Director, Montgomery County Planning Board

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Tuesday, August 09, 2005 12:18 PM
To: Loehr, Charles; Robert.Hubbard@montgomerycountymd.gov; Berlage, Derick
Cc: Krasnow, Rose; brown@knopf-brown.com; CraigT@washpost.com; Shileykim@aol.com; jonwardeleven@comcast.net
Subject: Re: Enforcement of SPEA for Clarksburg Town Center

Charlie -

This is not as much an "alleged" violation as it is a clear-cut enforcement issue on the part of M-NCPPC. It is quite simple for you to read the text and also to validate that community-wide facilities have not been turned over to the HOA. There is no "wigggle room" for alternate interpretations on this clause within the SPEA. The Board DOES NOT have to wait for a hearing on this matter. It can and should, based on the responsibility to enforce under the SPEA, issue a stop work order until "the defect is cured."

I engaged Robert on this issue as I had hoped that the latest "resolution" would enable DPS to take action where the Board has repeatedly refused to do so. To your knowledge, is it within DPS' authority now to take action on SPEA enforcement?

Thanks,
Amy

8/13/2005

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FAX: (301) 545-6103
E-MAIL BROWN@KNOFF-BROWN.COM
WRITER'S DIRECT DIAL
(301) 545-6105

DAVID W. BROWN

August 10, 2005

Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Clarksburg Town Center
Building Height and Setback Data

Dear Chairman Berlage:

I write on behalf of the Clarksburg Town Center Advisory Committee ("Committee") to register the Committee's concern, inter alia, about the inadequacy of the building height and setback data we have thus far obtained from the CTC developer and builders. In keeping with your publicly expressed commitment to exercise "more hands on management," Washington Post B2 (Aug. 1, 2005), I seek your assistance in promptly rectifying this problem as the Committee prepares for the September 15, 2005 hearing on this matter.

1. **Background**

In her July 7th Compliance Memorandum, Development Review Chief Rose Krasnow recommended fines for each townhome or 2-over-2 unit exceeding 35,' fines for the one multi-family unit (Building No. 3) over 45,' and fines for each unit that violates the 10' front yard setback. Near the end of the hearing, Ms. Krasnow recommended that a determination of sanctions should follow receipt from the developer and builders of complete height and setback data on all units, so that a unit-by-unit determination of sanctions could be made. The Board concurred that it should await this information before imposing sanctions. Then, in a Resolution unanimously adopted of July 26th, the County Council endorsed the procedure, agreed to by the developer and builders, whereby the Board should "investigate and adjudicate **all** allegations of violations prior to adjudication of the sanctions." Res. No. 15-1125 at 2 (emphasis in original).

The Committee's understanding and expectation, therefore, is that after adjudication of all violations alleged at or before the September 15th hearing, the Board will impose sanctions, unit-by-unit, on all single family attached and 2-over-2 units that are in excess of 35,' along with sanctions for the one multi-family building in excess of

45,' plus separate sanctions for all units (to include single-family detached dwellings) in violation of the 10' street setback requirement. Sanctions will be imposed on all existing units or future units in violation of either the Phase I or Phase II Site Plans.¹ If there is disagreement with this summary, whether within the staff or among the respondents, the Committee requests that it be promptly informed of any differing interpretation.

Under these circumstances, prompt disclosure of detailed, complete and reliable height and setback data is vital to a proper hearing outcome. Two weeks after the July 7th hearing, the staff received some developer and builder-generated height and setback data. Miller and Smith presented height data on all 124 of its townhouses constructed to that date. The other builders – Craftstar, NV Homes and Bozzuto presented building height data on 378 units in a consolidated table prepared by Charles P. Johnson & Associates, Inc. ("CPJ"). CPJ also furnished a consolidated table showing specific setback violations on 97 units, the builders being identified as Craftstar, NV Homes, Miller & Smith, and Porten.²

2. Analysis of Responses – Building Height

The Committee has analyzed the data submitted according to the following standard: Is it complete enough for the staff and the Committee to perform an independent evaluation of its accuracy? As I made clear to Ms. Krasnow in a July 27th letter (copy attached), there should be detailed unit-by-unit building height information for all enclosed (partially built) or completed residences in the CTC, so that both staff and the Committee can reach and present to the Board their own conclusions about the scope of building height violations. There are several areas where additional data is required for the Committee to complete its review of building height compliance:

a. Centerline Road, Ground and Terrace Elevations

Actual centerline road elevations are missing on the CPJ data for all units utilizing either a ground elevation (Condition #2) or a terrace elevation (Condition #3) as the base elevation for the height measurement. Similarly, Miller and Smith substitute terrace

¹ It is the Committee's understanding that sanctions will be imposed without regard to "grandfathering" of existing or to-be-constructed units. Whether a unit in violation will be allowed to stand as is (or be built to excess height or setback) is a separate and distinct issue from sanctions for these violations.

² None of the CPJ data was furnished directly to the Committee; I had to get a copy of the CPJ data from Ms. Krasnow. She understandably had thought that the data would have been sent to us as a matter of course by the respondents. The Committee requests that you insist that the developer and builders regularly furnish the Committee with the same information being furnished to the staff, for the duration of this proceeding.

elevations for street elevations in a number of instances. The Committee intends to evaluate, unit-by-unit, every material increase in base elevation over the road elevation. To do this, we must know the road elevation for **every** unit.

Miller and Smith identified 8 units where street elevation data was replaced with higher terrace elevation data, resulting in buildings that are higher than if height were determined solely in relation to street grade and effectively reducing on paper the actual height of buildings on site. For CPJ, 27 Craftstar and 6 NV Homes units are identified as "Condition 3" units. For a majority of these units, whether they are actually entitled to what DPS refers to as a "terrace credit" will be determinative of whether a building height violation exists. For all of these units, the Committee requests information that the Board should also have: a unit-by-unit justification for claiming the terrace credit, in keeping with DPS policy on when such a credit is applicable.

CPJ also identified 50 Craftstar and 18 NV Homes units, plus one Bozzuto building, with street elevation data replaced with ground elevation data. This methodology again reduces on paper the actual height of the buildings on site. For 34 (68%) of the Craftstar units and one NV Homes unit, whether there is a building height violation turns on the legitimacy of this height measurement substitution. This substitution is applicable only when the building is more than 35' from the street line. Again, the Board should have, unit-by-unit, complete justification and data for any reliance on ground elevations to calculate building height including, in each case where the ground is higher than the street, justification for claiming the terrace credit, as above.

b. Basement/Cellar

Living areas that are all or partially below grade are either basements (more than 50% exposed) or cellars (less than 50% exposed). The Committee, as part of its evaluation of the impact on the community of building height violations, wants to know which units have basements, which cellars, and which neither one. No one has furnished any of this information.

c. Methodology

Miller and Smith explained the methodology employed to obtain building heights. The Committee recognizes that the distance from the threshold elevation to the mid-roof elevation was not individually computed unit-by-unit. According to CPJ, an aerial photogrammetric survey of roof eaves and ridges is being performed. The Committee expects this survey to include Miller and Smith units. Please have CPJ confirm that this is so. The Committee also requests that CPJ describe in detail the methodology it employed to present building height data. To the extent that methodology differs from that employed by Miller and Smith, we request an explanation from CPJ of the differences and their significance, if any.

d. Staff Analysis

While the Committee intends to analyze building height compliance as thoroughly as it can, this should not absolve the staff from conducting its own reliability cross-check on the data submitted. Given the Board's findings of widespread building height violations, the staff should not blindly accept building height data submitted by Newland, Miller and Smith, or anyone retained by them. Doing so would be contrary to the expectations of the County Council, as reflected in Resolution No. 15-1125, and the equivalent of letting the fox guard the henhouse and then prepare the hen inventory. At a minimum, the data submitted should be randomly tested for accuracy by an outside expert not heavily dependent upon the development community for income. Only if no material discrepancies emerge should this sort of "spot-check" be deemed sufficient.

Particularly troubling, and meriting a full explanation by the staff, is the considerable discrepancy between building heights reported by the staff to the Board (Witthans Memorandum 7 (April 8, 2005)) and those reported more recently by CPJ and Miller and Smith. The chart below shows the reported heights in April, by builder, and the number of units lower than that as reported by CPJ and Miller and Smith. The obvious and unanswered question is why do most units (and for NV Homes **all** units) come in at a lower height than was reported by staff in April?

| <u>Builder/Units</u> | <u>Staff Reported Height</u> | <u>Number Below</u> | <u>% Below</u> |
|---------------------------|------------------------------|---------------------|----------------|
| NV Homes Townhouses | 42'6" | 141/141 | 100 |
| Craftstar Townhouses | 37'8" | 119/168 | 71 |
| Miller & Smith Townhouses | 40' | 86/124 | 69 |

e. Height of 2-Over-2 Units

Excluded from the above chart are the 42 Craftstar 2-over-2 units among the CPJ data. The April 2005 staff report shows a range of heights for these units from 48'5" to 51'7." Presumably the staff has more specific unit height data from April that is still available to cross-check the current data and consider any discrepancies. It should also be noted that the CPJ height data is clearly erroneous for units 90-95 in Block A; the methodology employed for reporting height for those units is inconsistent with that employed for other 2-over-2 units.

3. Setback Data

The setback data table provided by CPJ at once provides more and less information than necessary. The methodology for calculating setbacks is not disclosed, nor the scope of the measurement work. The implication from the table is that all units

not listed are setback-compliant. An explicit certification to that affect by CPJ should be provided. This certification should extend to all units started or completed after July 7th. See n.1, supra.

The purpose of the "Plan View" data is not disclosed. If the point is to suggest that most units meet or exceed the setbacks shown on a one-sheet plan of the entire CTC – where the scale of the drawing is too large for meaningful measurement and the drawing was prepared for another purpose entirely – it is an irrelevancy. The Board has ruled that the 10' setback requirement, which shows up in the data table in every relevant plan, is controlling, not the inferred measurements from the Plan View.

4. Unconstructed Grandfathered Units

The Board ruled on July 7th that grandfathering would extend to units under contract by that date, even if construction had yet to begin. This was a development that took place after the testimonial phase of the hearing, and the Committee had no opportunity to respond. For several reasons, this interim decision should be reconsidered at the next hearing, or at least before adjudication of this case becomes final.

First and foremost, the staff and the builders failed to disclose to you that, in many instances, as early as May 2005, buyers under contract were offered the option to cancel these contracts with a full refund of deposit money, after it became clear that the Board was going to reconsider its April 14th finding of no violations. A sample letter to this effect is attached, showing copies to the staff. Indeed, by June 9, 2005, the reconsideration action even precipitated voluntary builder forbearance on construction of additional units that would violate the signature set data tables, as exemplified by Craftstar's letter to the staff (copy attached). Why should builders be allowed to initiate construction of anything in violation of approved site plans after they were clearly on notice of the risk of going forward?

Secondly, grandfathering of unconstructed units creates ambiguity and confusion about what construction is approved, especially in view of the fact that there have been numerous staff-approved site plan amendments that have not gotten past the paper stage into actual construction. DPS, in seeking to review building height issues in the CTC, has encountered just such ambiguity and confusion in recent days. The Board can eliminate the problem by simply implementing in this case its announced decision to eliminate site plan amendments that are not expressly approved by the Director or the Board. This expectation is another prominent part of Council Resolution No. 15-1125. Accordingly, no site plan amendments should be deemed grandfathered for unconstructed units. If Newland or any of the builders wish to proceed with construction of any of these grandfathered units, they should either proceed according to a properly adopted signature set site plan or, if they wish to proceed according to an amended site plan, first obtain a Director or Board-approved amendment that the Committee will first have an opportunity

to review. Nothing at all should happen until all concerned parties know precisely what documents are controlling.

Finally, the Committee wishes to review the contract information required to be submitted to the Board by August 5, 2005 as a condition of Preliminary Plan Extension, as so ruled by the Board on July 28, 2005. This information is essential to evaluate the legitimacy of each and every contract-based grandfathering claim. The Board should insist on obtaining a complete enough record of the history of dealings with each prospective purchaser to validate legitimacy and ensure that no listed contracts were revived from the dead after that date. Given the option-to-cancel letter that went out, this is hardly a speculative concern.

* * *

As emphasized to Ms. Krasnow, all of this information is important to the Committee; not only for building height assessment, but also to the case the Committee intends to make next month taking issue with the claim that, "as built," the developer has not done "extensive damage to the community." Staff Compliance Memorandum 3 (July 7, 2005). The Committee is hopeful that your public comments mean that vigorous efforts will be made to obtain all the relevant data the Committee needs to present its views to the Board, data that should be deemed equally important to the staff and the Board for the proper resolution of this case.

Sincerely yours,



David W. Brown

/enclosures

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